

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF PUERTO RICO  
3  
4 In Re: ) Docket No. 3:17-BK-3283 (LTS)  
5 )  
6 ) PROMESA Title III  
7 The Financial Oversight and )  
8 Management Board for )  
9 Puerto Rico, ) (Jointly Administered)  
10 )  
11 *as representative of* )  
12 )  
13 The Commonwealth of )  
14 Puerto Rico et al., ) January 29, 2020  
15 )  
16 Debtors, )  
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12 In Re: ) Docket No. 3:17-BK-4780 (LTS)  
13 )  
14 ) PROMESA Title III  
15 The Financial Oversight and )  
16 Management Board for )  
17 Puerto Rico, ) (Jointly Administered)  
18 )  
19 *as representative of* )  
20 )  
21 Puerto Rico Electric )  
22 Power Authority, )  
23 )  
24 Debtor, )  
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3 Sciemus Limited, et al., ) Docket No. 3:19-AP-00369 (LTS)  
4 Plaintiffs, ) in 3:17-BK-4780 (LTS)  
5 v. )  
6 Financial Oversight and )  
7 Management Board for )  
8 Puerto Rico, et al., )  
9 Defendants. )

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10 OMNIBUS HEARING  
11 BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN  
12 UNITED STATES DISTRICT COURT JUDGE  
13 AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN  
14 UNITED STATES DISTRICT COURT JUDGE

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16 APPEARANCES:

17 For the Mediation Team: Honorable Chief U.S. Bankruptcy Judge  
18 Barbara J. Houser

19 For The Commonwealth  
20 of Puerto Rico, et al.: Mr. Martin J. Bienenstock, PHV  
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22 For the U.S. Trustee  
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24 For the Official  
25 Committee of Unsecured  
Creditors: Mr. Luc A. Despins, PHV  
Mr. G. Alexander Bongartz, PHV

1 APPEARANCES, Continued:  
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4 Fiscal Agency and  
5 Financial Advisory  
6 Authority: Mr. Peter Friedman, PHV  
7 Mr. Luis C. Marini Biaggi, Esq.  
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9 For Assured Guaranty  
10 Corp. and Assured  
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12 Mr. Casey J. Servais, PHV  
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14 For Financial Guaranty  
15 Insurance Company: Mr. Martin A. Sosland, PHV  
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21 en la Montana: Mr. John E. Mudd, Esq.  
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23 For National Public  
24 Finance Guarantee Corp.: Mr. Robert Berezin, PHV  
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27 LLC: Mr. Thomas P. McLish, PHV  
28 Appearing from New York  
29 Mr. Fernando Van Derdys, Esq.  
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31 For AmeriNational  
32 Community Services,  
33 LLC, as servicer for  
34 the GDB Debt Recovery  
35 Authority: Mr. Nayuan Zouairabani, PHV  
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37 For Puerto Rico  
38 Electric Power  
39 Authority: Mr. Joseph Davis, PHV  
40  
41  
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45 Proceedings recorded by stenography. Transcript produced by  
CAT.

1	I N D E X	
2	WITNESSES:	PAGE
3	None offered.	
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5	EXHIBITS:	
6	None offered.	
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San Juan, Puerto Rico

January 29, 2020

At or about 9:38 AM

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THE COURT: Again, buenos dias. Welcome counsel, parties in interest, and members of the press and public here in San Juan, those observing here and in New York and telephonic participants. As always, it is good to be back here. This has been a very challenging month for Puerto Rico, and we have in mind the people who have been severely effected by the earthquakes.

I remind those present in the courtrooms and listening on the phone line that, consistent with court and judicial conference policies and the Orders that have been issued, there is to be no use of any electronic devices in the courtroom to communicate with any person, source, or outside repository of information, nor to record any part of the proceedings. Thus, all electronic devices must be turned off unless you are using a particular device to take notes or to refer to notes or documents already loaded on the device. All audible signals, including vibration features, must be turned off.

No recording or retransmission of the hearing is permitted by any person, including but not limited to the parties or the press. Anyone who is observed or otherwise

1 found to have been texting, e-mailing or otherwise  
2 communicating with a device from a courtroom during the court  
3 proceeding will be subject to sanctions, including but not  
4 limited to confiscation of the device and denial of future  
5 requests to bring devices into the courtroom.

6 Our timing this morning is from 9:30 to noon, and  
7 then from 1:00 to five o'clock, if necessary. And we'll begin  
8 with the Oversight Board's status report.

9 MR. BIENENSTOCK: Thank you, Judge Swain. Good  
10 morning.

11 THE COURT: Good morning, Mr. Bienenstock.

12 MR. BIENENSTOCK: Martin Bienenstock of Proskauer  
13 Rose for the Oversight Board, for itself and as representative  
14 of the Title III debtors.

15 In respect of Your Honor's first topic for the status  
16 report, the general status and activities of the Oversight  
17 Board, especially since the December hearing, the Oversight  
18 Board's attention and activities have centered on, among many  
19 subjects, monitoring fiscal plan implementation, mediation,  
20 plans of adjustment and litigation.

21 We know the Court is very aware of the  
22 confidentiality restrictions concerning mediation, so in that  
23 respect, I simply want to emphasize what I'm allowed to say,  
24 which is the mediation is very much in progress. It is  
25 possible, but I can't promise, that during the next month

1 | there will be some public announcements that would manifest  
2 | that progress.

3 |           With respect to the earthquake and earthquake swarm,  
4 | the Board immediately made available the budgetary reserves  
5 | established in the certified budgets for fiscal years '19 and  
6 | '20, totaling 260 million dollars, for use in the emergency  
7 | situation. As the Court may recall, our budgets have a  
8 | growing emergency reserve, so it's cumulative, and that's why  
9 | I'm mentioning the two budgets.

10 |           The chairman and executive director of the Oversight  
11 | Board together have made three visits to the south of Puerto  
12 | Rico, including some six municipalities. The Governor  
13 | provided immediate support of two million dollars to the  
14 | hardest hit municipalities and 250,000 dollars to others with  
15 | damage.

16 |           President Trump has made the disaster declaration,  
17 | enabling FEMA individual and public assistance to those in  
18 | need who qualify. There are 16 municipalities included in the  
19 | disaster declaration.

20 |           Earthquakes continue. Recently, we had about 17 over  
21 | 2.5, including one that registered 5.0 and rocked many homes,  
22 | including the Oversight Board's offices in San Juan. There is  
23 | no end in sight, though they have slowed and are reduced in  
24 | number since the peak.

25 |           Thousands remain in tents constructed by the National

Guard and other shelters, some facing new flooding given the weather over the last weekend. Schools in the southwest remain closed, with many structurally uninhabitable. Other schools in the north, which have been deemed structurally safe, are beginning to reopen. Hundreds of homes and public buildings have been damaged, including prisons, schools, bridges and roads. There are hundreds of millions of dollars of damage.

In respect of ERS, Your Honor, discovery is continuing, and the disputes regarding the scope of the bondholders' lien and ERS assets and whether the issuance of ERS bonds was ultra vires. The Oversight Board and the bondholders groups are discussing a modified discovery schedule.

The Oversight Board is also awaiting decision from the First Circuit concerning the bondholders' appeal of this Court's Section 552(a) ruling. In addition, briefing is ongoing and the bondholders' appeal of the Court's Order denying appointment of the bondholders as trustees of ERS under Section 926(a) of the Bankruptcy Code, with oral arguments scheduled for the beginning of March.

In respect of PRIDCO's RSA and anticipated Title VI, as the Oversight Board informed the Court at the December hearing, PRIDCO has public bonds in the outstanding amount of approximately 150 million dollars in principal and 15 million



1 | dollars in accrued interest.

2 |           As AAFAF notified the Court in the October hearing,  
3 | AAFAF entered into a Restructuring Support Agreement with over  
4 | two-thirds of those bondholders. While the Oversight Board  
5 | has not been formally asked to approve the RSA as a qualifying  
6 | modification, the Board's professionals are working with  
7 | AAFAF's professionals to understand the implementation of the  
8 | RSA, corresponding economic measures and the proposed fiscal  
9 | plan for PRIDCO, which is currently being revised based on  
10 | comments provided by the Oversight Board. Should the revised  
11 | fiscal plan meet the Oversight Board's requirements and the  
12 | Oversight Board issue a voluntary agreement certification  
13 | relating to the PRIDCO RSA, the parties aim to commence a  
14 | Title VI qualifying modification for PRIDCO, not before the  
15 | end of the first quarter of 2020.

16 |           In respect of relations among the Oversight Board and  
17 | the Commonwealth and Federal Government, in respect to the  
18 | Commonwealth relations, our relationship with the Governor and  
19 | government remains collaborative, though they have been  
20 | overwhelmed in the response to earthquakes in the south, thus  
21 | delaying much other routine work.

22 |           In terms of the Federal Government relations with  
23 | Federal Government, obviously having many different speaking  
24 | parts, our relationship with the Federal Government is status  
25 | quo. The Federal Government, in this case HUD, inserted the

Oversight Board into the disaster funds process to ensure the use of the funds is consistent with both the certified fiscal plan and certified budget in recognition of the Oversight Board's oversight role.

Moreover, many congressional representatives signed one or more public letters expressing concern the agreements reached prior to the earthquakes must be reviewed in light of the major cost to the island and the clear lack of resiliency of the infrastructure. The Board will not tell the Court any proposed plan of adjustment is feasible if it believes to the contrary, but so far it has not determined there is sufficient basis to change course.

In terms of disaster funding, in response to the recent earthquakes, President Trump has signed a major disaster declaration making federal funding available, and the U.S. House Appropriation Subcommittee announced the introduction of a supplemental spending bill that will provide an additional 3.35 billion dollars in disaster relief. In addition, the Federal Government has indicated it will impose new requirements related to 8.2 billion dollars in HUD Community Development Block Grant disaster relief funds.

In respect to FEMA, FEMA has agreed to allow the Commonwealth to use the procedure under Section 406 of the Stafford Act for noncritical infrastructure projects, which does not require preapproval and, therefore, enables projects

1 to get under way more quickly. FEMA has also responded to  
2 the recent earthquakes. The Oversight Board welcomes  
3 continued communication and collaboration with FEMA to  
4 facilitate effective post-hurricane and post-earthquake  
5 recovery.

6 In terms of the PREPA RSA, the Oversight Board  
7 received a letter from several members of Congress dated  
8 January 23, 2020, regarding the terms of PREPA's proposed RSA.  
9 The Oversight Board is reviewing the letter and welcomes  
10 continued communication with the Federal Government regarding  
11 the RSA.

12 Your Honor also put the pro se claim response  
13 methodology on the list, and if it's okay with the Court, I  
14 will defer that to Ms. Stafford, my colleague, because  
15 otherwise I'll just duplicate and steal her thunder, which I'm  
16 not good at doing.

17 THE COURT: Very well.

18 MR. BIENENSTOCK: So if I can move on to the last  
19 topic, Your Honor asked for a report on the anticipated timing  
20 for legislative approval of the policies embodied in the PREPA  
21 9019 motion. Your Honor's placement of this topic on the  
22 report list was prescient, as the Board and government have  
23 been engaged in constructive discussions. And the Governor  
24 and AAFAF met last week with Puerto Rico legislative leaders  
25 to discuss, among other things, PREPA'S debt restructuring.

1           The government parties and the supporting holders  
2 have worked on draft legislation with the intent that it be  
3 presented to the legislature for consideration during the  
4 current session, which began on January 14, 2020, and ends  
5 June 30, 2020. We remain hopeful the legislation will be  
6 submitted in the coming weeks.

7           As the Court knows, the legislative process is an  
8 iterative one, and predicting legislative timing and outcomes  
9 is far from an exact science. Based on this uncertainty, the  
10 Oversight Board will seek an extension of the briefing  
11 schedule and then adjournment of the March 31 hearing on the  
12 PREPA RSA to allow time for the parties to make progress with  
13 respect to the legislation. We are in discussions with the  
14 supporting parties on this schedule, and we'll file an urgent  
15 motion as soon as we can.

16           THE COURT: And since you do see this coming and  
17 there's at least a month between now and the March target  
18 date, when you file the urgent motion, please don't make it  
19 one on which I have to declare a briefing schedule that's 72  
20 hours, and 48 hours, over a weekend. People get really  
21 annoyed about that, and me, too. So please do it with  
22 sufficient lead time to do this in a civilized way.

23           MR. BIENENSTOCK: Absolutely, Your Honor. And  
24 hopefully we haven't been guilty of that, but we don't like it  
25 either.

1           THE COURT: I'm not tagging anybody in particular,  
2 but there are a whole lot of urgent motions whose urgency  
3 seems to arise from the date on which they were filed as  
4 opposed to context, so I'd be grateful if everybody would be  
5 mindful of that.

6           MR. BIENENSTOCK: Thank you, Your Honor. And  
7 although Your Honor asked for the report, so we would have  
8 said anyway, part of the reason for wanting to raise that is  
9 we know the Court put aside time March 31, and better to have  
10 more notice than less for our request.

11          THE COURT: I do very much appreciate that. As you  
12 know, there are logistics all around, including with all of  
13 the Court personnel, and so I appreciate the advanced  
14 notice.

15          MR. BIENENSTOCK: Unless the Court has other  
16 questions, that is the end of our report for this morning.

17          THE COURT: Thank you. Except for Ms. Stafford.

18          MR. BIENENSTOCK: Right.

19          THE COURT: Thank you, Mr. Bienenstock.

20          MS. STAFFORD: Good morning, Your Honor.

21          THE COURT: Good morning, Ms. Stafford.

22          MS. STAFFORD: Good morning. Laura Stafford from  
23 Proskauer on behalf of the Financial Oversight and Management  
24 Board. Thank you, Your Honor, for the opportunity to address  
25 the Court regarding the pro se responses to the Omnibus claim

1 objections that have been received by the Court.

2 As Your Honor is aware, hundreds of responses to  
3 these claim objections were filed by pro se parties just in  
4 the past month. We are in the process of reviewing those  
5 responses that have been received to date.

6 Currently, upon entry of the Order regarding  
7 administrative claims reconciliation procedures which the  
8 Court approved at the October Omnibus hearing, we anticipate  
9 that the great majority of those claimants, at least 80  
10 percent, and likely far more than that, will be referred to  
11 the Commonwealth's administrative claims reconciliation  
12 processes, or to the alternative dispute resolution  
13 procedures, in the event that Your Honor approves the motion  
14 that's set for hearing later today.

15 We're continuing to review the responses that are  
16 currently on file, and if it is determined that any of these  
17 responses either do not contain sufficient information for or  
18 are otherwise inappropriate for either of those two  
19 procedures, or if they cannot be resolved in some other  
20 manner, we intend to proceed with our objections to those  
21 claims at the March 4th, 2020, Omnibus hearing.

22 With respect to the process going forward, I'm happy  
23 to report that we are nearing the end of our high volume set  
24 of Omnibus objections to deficient claims that assert  
25 liabilities based on unspecified Commonwealth laws or salary

1 demands, services provided and pensions accrued, the type of  
2 Omnibus objections that have taken up the bulk of the  
3 objections set for today and for the December Omnibus.

4 As Your Honor is no doubt aware, earlier this month  
5 we filed an additional 30 Omnibus Objections to Deficient  
6 Claims, which are currently set for hearing on March 4th. In  
7 the coming weeks, we anticipate filing an additional  
8 approximately 13 Omnibus Objections to Deficient Claims, which  
9 will be scheduled for hearing on April 22.

10 We are continuing to review additional claims that  
11 may fall into these buckets as well of deficient claims, and  
12 we may need to file additional deficient Omnis beyond those 13  
13 that we're expecting. However, we do expect that the number  
14 of deficient Omnibus objections, as well as the number of  
15 claims scheduled on each objection, will start to decrease  
16 over the coming months. Each of these objections have been  
17 and will be filed, of course, in accordance with the  
18 procedures approved by the Court at the November 2018 and the  
19 June 2019 Omnibus hearings.

20 We also appreciate Your Honor's suggestion that a  
21 response form be developed to help streamline and focus the  
22 processing of pro se responses. In that regard, we would note  
23 that the mailing that was sent to each of the claimants last  
24 summer and over the course of the fall requests the  
25 information that the debtors need from these parties in order

1 to be able to reconcile these claims. And we would be happy  
2 to include a simplified version of that mailing with any  
3 future claim objections, which may help focus claimants'  
4 responses so that they can provide the information we actually  
5 need in order to determine what procedure may or may not be  
6 appropriate for their claim. In addition, we're happy to  
7 revise our noticing procedures, however, as necessary, to  
8 reduce the number of defective filings which we understand  
9 present a burden to the Court and the court clerks.

10 For example, we noticed that a number of defective  
11 filings -- or defective pleadings that were filed over the  
12 next few weeks lacked signatures, and both the claim objection  
13 notices and the proposed simplified form can reinforce the  
14 requirement that claimants must sign their responses before  
15 they can be accepted for filing. And of course we're happy to  
16 take direction from the Court if there are any further  
17 revisions to the notices or to the objections that the Court  
18 would like us to make.

19 THE COURT: Well, I appreciate this report in all of  
20 its aspects and your agreement that some attention to the form  
21 in which information is elicited can be helpful. I think you  
22 may see hitting the docket an Order that I prepared relating  
23 to the responses that we've gotten from people whose claims  
24 haven't been objected to yet, which is an interesting  
25 development. There are a number of those. And for what it's



1 | worth, our suspicion is that people are seeing their neighbors  
2 | getting some notice and deciding that they're going to  
3 | volunteer some information and copying information from their  
4 | neighbors' responses.

5 |           And so our Order is going to ask you to file an  
6 | informative statement by the middle of February indicating  
7 | generally what you're intending to do with those. And I was  
8 | comforted to hear that you have a plan for some 80 percent of  
9 | these pro se responses. And I think it's in all of our  
10 | interests that, to the extent the responses are not being  
11 | channeled into other mechanisms, that the number of truly  
12 | disputed ones that need to be heard in any given Omni is kept  
13 | to a manageable amount of traffic, so that if further  
14 | adjournments are required to do that, I'm obviously open to  
15 | having you do that.

16 |           MS. STAFFORD: Okay.

17 |           THE COURT: And then in a few minutes, before we talk  
18 | about -- actually, I guess I can do it now. The other big  
19 | problem is the inclusion of sensitive personal identifiers in  
20 | filings. People seem to get the objections and then, you  
21 | know, open up the drawers with the driving licenses and  
22 | everything else and start copying things and sending them to  
23 | the Court. And we are not in the position, as a court, to  
24 | start redacting things. And many of these filings are  
25 | voluminous.

1                   And so I will state for the record and for the  
2                   purpose of finding on the right of access issues, that given  
3                   the large volume of responses and the Court's limited  
4                   personnel resources, we have determined to seal pro se  
5                   submissions that contain sensitive personal information, and  
6                   give access to those sealed filings to designated attorneys  
7                   representing the Oversight Board in the first instance. And  
8                   we also give notice to the filer of that. And the docket will  
9                   reflect that there is a sealed exhibit containing sensitive  
10                  personal information, which is sometimes pervasive through a  
11                  200 page filing.

12                  This is the most narrowly tailored means available to  
13                  the Court to ensure that the pro se claimants' responses will  
14                  be filed in a timely manner, while protecting the sensitive  
15                  personal information. And we do give them advice in our  
16                  Notice of Deficiency that they should redact and refile, but  
17                  sometimes they just send us more, which doesn't help because  
18                  then that gets --

19                  MS. STAFFORD: Right.

20                  THE COURT: -- sealed as well. So we do have a  
21                  suggestion for some potential amelioration of these issues,  
22                  which is to include language along the following lines in the  
23                  claim objection notice:

24                  All materials submitted to the Court in response to  
25                  claim objections may be publicly filed and accessible to any

1 member of the public. Therefore, in your submissions to the  
2 Court, do not include sensitive documents or information, like  
3 driver's licenses, passports, birth certificates, Social  
4 Security cards, sensitive medical information or confidential  
5 business information. Social Security numbers and taxpayer  
6 identification numbers should be redacted, that is, blacked  
7 out, except for their last four digits. Birthdays should be  
8 redacted, except for the year of an individual's birth.  
9 Minors' names should be redacted, except for their initials.  
10 And financial account numbers should be redacted, except for  
11 their last four digits. Any such sensitive or confidential  
12 information that you rely on in support of your claim must be  
13 provided directly to the debtors' counsel and will be kept  
14 confidential. And then give contact information for debtors'  
15 counsel so that that communication can take place off-line.

16 So that builds on information that you already had  
17 there, but it's an effort to make it a little bit more  
18 accessible to the lay people who are responding to the notice.  
19 So that is our suggestion and request, that you consider  
20 incorporating that kind of language.

21 MS. STAFFORD: That process makes a lot of sense to  
22 us, Your Honor. Thank you.

23 THE COURT: Thank you. So I have -- yes. I have no  
24 further questions for the Oversight Board.

25 MS. STAFFORD: Thank you, Your Honor.

1 THE COURT: Mr. Bienenstock.

2 MR. BIENENSTOCK: Your Honor, thank you.

3 I'm grateful to Mr. Despins for bringing something to  
4 my attention that -- I mentioned that in terms of the PREPA  
5 hearing, we would be filing a motion to change the hearing  
6 date and the briefing schedule, and Mr. Despins reminded me  
7 that our next brief is due February 3. So to avoid exactly  
8 what Your Honor said about a last minute, urgent motion, I  
9 wonder if we could have an adjournment for, say, three weeks?  
10 And it might be further changed based on whether there is an  
11 adjournment of the hearing or not and how long it is, but that  
12 would still have our pleading on file well before the  
13 currently scheduled hearing of March 31st.

14 THE COURT: So this is a reply that is due February  
15 3rd?

16 MR. BIENENSTOCK: Our response to the objections to  
17 the RSA is due February 3.

18 THE COURT: And so that is basically the nature of  
19 the reply. But then, as I recall, there are further filings  
20 in the schedule after that filing -- so of course my concern  
21 will be that I don't end up with hundreds or thousands of  
22 pages of filings completed only a week before the hearing  
23 date. So if you are going to take that filing deadline out  
24 three weeks now, that's certainly going to require moving the  
25 hearing date.

1                   And I have been trying in all of these adjournments  
2   to keep and maintain space for the Court to give necessary,  
3   thorough, and fair consideration of everything, and as we're  
4   moving into the schedule under the interim orders, as they may  
5   be adjusted -- as you know, my major issue processing load on  
6   these cases is increasing exponentially for the spring, so  
7   we'll need to keep that in mind in revised scheduling.

8                   MR. BIENENSTOCK: I think for now, perhaps I should  
9   change it to two weeks or even one week so that there's time  
10  to file a motion that the Court doesn't have to deal with over  
11  the weekend, and the parties don't have to deal with it.

12                  THE COURT: All right. So let's make it two weeks  
13  now. So that would be until February 17 --

14                  MR. BIENENSTOCK: Okay.

15                  THE COURT: -- for the response to the objections to  
16  the RSA.

17                  MR. BIENENSTOCK: Thank you.

18                  THE COURT: Is there any major panicky objection to  
19  my extending that two weeks? Mr. Natbony.

20                  MR. NATBONY: Excuse me, Your Honor.

21                  MR. BIENENSTOCK: Okay. Two things, Your Honor, that  
22  we agreed to: The other replies due should also have the same  
23  adjournment, and when we do move to change the hearing date,  
24  we will not use this extension as a basis to support our  
25  request.

1 THE COURT: Very well then. That -- I'm sorry.

2 MR. MOERS MAYER: One second, Your Honor.

3 MR. BIENENSTOCK: Your Honor, Mr. Moers' point is  
4 that -- I should just clarify. I was only talking about the  
5 pleadings responding to the objections to the RSA and then  
6 follow-up pleadings after that. I was not referring to a  
7 Motion to Dismiss that Mr. Moers' client is involved with. So  
8 they still have a February 3rd date. We have not asked to  
9 move that and Mr. Moers has not asked to move it.

10 THE COURT: Very good. So that this can be clear to  
11 everyone, will you file I guess you'd call it an informative  
12 motion, a proposed order, confirming the two-week adjournments  
13 of these two deadlines that I've granted --

14 MR. BIENENSTOCK: Sure.

15 THE COURT: -- on the record that I can then so order  
16 and enter into the docket?

17 MR. BIENENSTOCK: Yes. Thank you, Your Honor. We'll  
18 do that.

19 THE COURT: Thank you.

20 Mr. Moers is getting up again.

21 MR. MOERS MAYER: I don't think we have an issue,  
22 Your Honor.

23 MR. BIENENSTOCK: No. I assured Mr. Moers that our  
24 reply in the other matter he's referring to is also not being  
25 deferred. So we still have a February 3rd deadline for a

1 pleading, but it's not to reply to the objections. That's  
2 all.

3 THE COURT: Thank you for that clarity.

4 Mr. Despins.

5 MR. DESPINS: Just two minutes on PREPA. So  
6 obviously we consent to this short extension, and we consent  
7 to if the Board wants to adjourn the March 31st hearing,  
8 that's fine.

9 The only thing we want to raise with the Court, not  
10 asking for any ruling today, the litigators will discuss this,  
11 but we have to remember that the initial date was December 11,  
12 or something like that. The hearing date was supposed to be  
13 in December. The whole discovery was done on a fairly  
14 compressed schedule based on that hearing date, and everything  
15 was locked down, meaning no more declarations, nothing, based  
16 on that. Then it was adjourned to the end of January, then to  
17 March.

18 So, as I said, we have no problems with them pushing  
19 the dates out, but, you know, there are things that will be  
20 stale. I'll give you an example. We have declarations that  
21 assume a hearing in January, so of course those declarations  
22 are -- from a timing point of view, won't be accurate in  
23 whatever date is ultimately scheduled. So that's one example.

24 And so I want to make sure that -- and we will  
25 discuss that, and all that, so we're not asking the Court to

1 opine on that; but I just want to make sure that that's on  
2 your radar screen, because not everything will be stale, but  
3 some things are. Discovery that was taken in August or  
4 September, in May or June of this year may be still timely or  
5 not. It's unclear.

6 The other point I want to make, though, is that this  
7 issue of getting legislation to implement the RSA is not a  
8 novel issue. They've known about that for at least two years,  
9 when they signed the current RSA. And if you read the  
10 declarations, the main point is, assuming the Committee has  
11 great claims -- they don't say we have great claims, but  
12 assuming we did, there is just no time left to do this,  
13 because Judge Swain would have to rule. It would go to the  
14 First Circuit. It would take a year to do that.

15 I don't think they should be able to, and I'm not  
16 asking for a ruling on that, but to run the clock essentially  
17 for getting that legislation for more than a year now when  
18 they knew before they signed the RSA that they needed that  
19 legislation, and then to say, oh, by the way, we're out of  
20 time, this alternative does not make sense because there's no  
21 time left.

22 So to be continued, but I want to make sure that the  
23 Court has that also on your radar screen because we believe  
24 that that would be unfair, because this is something they've  
25 known about from the beginning, that they needed that



1 | legislation. Why they have not sought that or obtained that  
2 | before, I don't know. But clearly we cannot be in a position  
3 | where they're arguing in June of this year that, well, if we  
4 | had to litigate these issues, it would take six, seven months  
5 | to get a decision from Your Honor, and to go to the First  
6 | Circuit, when we could have done that starting in May of last  
7 | year. So that's the point.

8 |           THE COURT: And I have been aware that one of the  
9 | arguments has been that the -- that some of the argumentation  
10 | in favor of the utility and necessity of settlement has been  
11 | the time issue of being able to move forward quickly and not  
12 | having litigation going on. And I know that your counter  
13 | argument to that includes that that urgency is self-created to  
14 | a certain extent. And so I assume that that argument will  
15 | kind of get louder and more elaborated as we get later in  
16 | time.

17 |           MR. DESPINS: That's all I wanted to mention.

18 |           THE COURT: So as to the heads up about potential  
19 | requests for further discovery, Judge Dein and I will expect  
20 | that both your direct discussions with other parties and any  
21 | request to the Court will be clear, narrowly tailored and  
22 | raised in a timely fashion.

23 |           Judge Dein, should I say anything else on that at  
24 | this point?

25 |           HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: You

1 can emphasize that --

2 THE COURT: I emphasize that. There's three lines  
3 drawn underneath that.

4 MR. DESPINS: Okay. And as I said, many of the  
5 information may not be stale. Some categories may have  
6 changed over time.

7 That's all. Thank you, Your Honor.

8 THE COURT: Thank you.

9 Mr. Natbony.

10 MR. NATBONY: Thank you, Your Honor. I appreciate  
11 Your Honor's granting of the short period of time and the  
12 caution about not having the urgent motions, because Assured  
13 will be in a position where we will be objecting to the moving  
14 of the hearing date, and we appreciate that opportunity to do  
15 so in a fulsome manner without having the rush of a 48-hour,  
16 72-hour period.

17 With respect to Mr. Despins' argument about  
18 potentially the need for other declarations or discovery, I  
19 realize there is no formal motion before Your Honor, but  
20 obviously we take the position that there is no need for  
21 further discovery. There is no need for further declarations.  
22 We'll address that in any motion that's made.

23 And I also appreciate Mr. Bienenstock's  
24 representation that they won't use the short extension for  
25 their brief as a justification for the potential moving of an

1 adjournment date for the hearing.

2 Thank you, Your Honor.

3 THE COURT: Thank you.

4 Okay. My name generator just failed me, so please --

5 MR. BEREZIN: I will name myself, Your Honor. Robert  
6 Berezin of Weil Gotshal & Manges on behalf of National Public  
7 Finance Guarantee Corp.

8 THE COURT: Good morning, Mr. Berezin.

9 MR. BEREZIN: Thank you, Your Honor. National is a  
10 signatory to the PREPA RSA and, like Assured, doesn't support  
11 delay.

12 We would just point out that legislation is not  
13 required as a prerequisite to approve the RSA. It's not part  
14 of the RSA. It doesn't require legislative approval prior to  
15 the 9019 hearings. That is not something that is baked into  
16 the agreement between the parties, nor do we believe it's  
17 necessary. And that -- getting to a hearing as soon as  
18 possible is incredibly beneficial, we believe for PREPA, we  
19 believe for its Title III case -- its Title III case, as well  
20 as the other cases.

21 And we, too, appreciate the extra time and certainly  
22 do consent to the modification of the schedule to allow for  
23 briefing on that issue. And we certainly also oppose  
24 discovery, further discovery.

25 Thank you.

1 THE COURT: Thank you.

2 MR. DESPINS: Your Honor, there is a clarification  
3 here. I do not understand that the adjournment of the March  
4 31st hearing could be contested, because if it is contested --  
5 and the Court could decide, no, I'm sticking to March 31st,  
6 I've lost -- as to their reply, I've just lost two weeks  
7 because we have a reply to that as well.

8 I thought that maybe perhaps the selection of the  
9 date might be in limbo, but not that they would be opposing  
10 the adjournment, because then we are going to get prejudiced  
11 by the extension of their reply.

12 THE COURT: So Mr. Bienenstock, you started this by  
13 saying you discussed this concept with the supporting parties,  
14 and I also had the impression that there was some general  
15 recognition or agreement to an adjournment of the date of the  
16 30th. If it's going to be fought, it will be fought, but tell  
17 me what your understanding is and what your expectation is.

18 MR. BIENENSTOCK: Okay. Our understanding was the  
19 bondholders' supporting parties are working with us on this.  
20 The monolines, as you've heard this morning, may oppose or may  
21 not. We need to have further discussions with them.

22 THE COURT: All right. Then for now -- it's January  
23 29th today. Let's make this extension a one-week extension to  
24 February 10th.

25 MR. BIENENSTOCK: Okay.

1                   THE COURT: And get your discussions done. And if  
2 you expect that there's going to be vigorous opposition, you  
3 know, get your urgent motion in sooner rather than later. And  
4 you can keep talking while that's pending, but if there's  
5 going to be, you know, serious issues raised about whether we  
6 can and should stay in March, then I'll need to engage those  
7 quite quickly.

8                   MR. BIENENSTOCK: Thank you, Your Honor.

9                   THE COURT: Thank you. Give me just one moment.  
10 Yes, February 10th, because you're adjourning the February 3rd  
11 deadline for a week?

12                  MR. BIENENSTOCK: Yes, Your Honor.

13                  THE COURT: So it's February 10th. And then the  
14 corresponding deadline would also go out another week. And  
15 you'll give me a proposed order.

16                  MR. BIENENSTOCK: Yes, Your Honor.

17                  THE COURT: Okay. So since we're discussing calendar  
18 issues right now, we did move around the date of the April  
19 Omni, and I believe it is now the 22nd. And I think someone  
20 mentioned in other remarks the Omni being the 27th, but I  
21 might just have misheard that.

22                  So I'm just going to ask Ms. Selden to give me the  
23 definitive word on when the April Omni is. I think we had  
24 moved it from the 15th to the 22nd, or something like that.

25                  So it's the 22nd? I don't have my calender.

1 We'll provide that word as soon as we have it.

2 MR. BIENENSTOCK: All right. Thank you.

3 THE COURT: Thank you.

4 So let's go on to the AAFAF report.

5 MR. FRIEDMAN: Good morning, Your Honor. Peter  
6 Friedman from O'Melveny & Myers. The AAFAF report will  
7 largely be handled by my colleague, Mr. Marini, in terms of  
8 the disaster relief update.

9 AAFAF is working on fiscal plan issues, working on  
10 PRIDCO issues. And one of the major things AAFAF is working  
11 on and we think is appropriate dovetails with the last sort of  
12 colloquy that went back and forth, which was AAFAF and the  
13 Governor are working with the legislature and doing something  
14 we think is extremely important, and our client thinks is  
15 extremely important to PREPA and the transformation process,  
16 which is paying due respect to the legislature's prerogatives  
17 in connection with approval of important legislation.

18 Those are the key issues on AAFAF's agenda right now.  
19 Other than that, we agree with, in terms of status issues, the  
20 things going on that Mr. Bienenstock referenced. And beyond  
21 that, I'll turn it over to Mr. Marini for the comprehensive  
22 report on the issues you specifically asked AAFAF to address  
23 with respect to disaster relief and reconstruction post-Maria  
24 and the earthquakes.

25 Thank you, Your Honor.

1 THE COURT: Thank you, Mr. Friedman.

2 The date of the April Omni is April 22nd. And  
3 perhaps no one else was confused, but now it's clear. Thank  
4 you.

5 MR. MARINI BIAGGI: Good morning, Your Honor.

6 THE COURT: Good morning, Mr. Marini.

7 MR. MARINI BIAGGI: Luis Marini of Marini Pietrantoni  
8 Muniz on behalf of AAFAF.

9 First, Your Honor, I'd like to thank the Court for  
10 the opportunity to address again regarding the status of post  
11 hurricanes Irma and Maria infrastructure repairs and funding,  
12 as well as initial assessments after recent and continuing  
13 earthquakes. This is a topic that is of high importance to  
14 AAFAF, to Governor Wanda Vazquez, the people of Puerto Rico,  
15 after the devastation caused by the hurricanes over two years  
16 ago, and that suffered more recently through the numerous  
17 earthquakes that have affected the southern part of Puerto  
18 Rico since December 28, 2019.

19 Your Honor, the Oversight Board covered some of the  
20 aspects of the funding for the earthquakes. I'll try not to  
21 repeat myself, but I'll get into more detail in some of the  
22 areas. I'll first provide an overview of the initial damage  
23 assessments done to date as a result of the recent and ongoing  
24 earthquakes, as well as repair efforts. I'll then provide  
25 some additional detail on the damage assessments and projects

1 undertaken by PREPA, HTA and the Department of Education with  
2 the Commonwealth.

3 Finally, Your Honor will recall that AAFAF provided a  
4 detailed report on the status of post hurricanes Irma and  
5 Maria infrastructure repairs and funding during the last  
6 Omnibus hearing, so I'll limit my presentation only to new  
7 developments since then. Finally, Your Honor, I know that the  
8 date and information that I provide today has been obtained by  
9 AAFAF directly from PREPA, HTA, Department of Housing,  
10 Department of Education, and COR3.

11 Your Honor, since December 28, 2019, hundreds of  
12 earthquakes and aftershocks have been recorded in Puerto Rico,  
13 with the largest one of a magnitude of 6.4 occurring on  
14 January 7, 2020. These earthquakes and aftershocks have been  
15 concentrated in the southern part of Puerto Rico. Damage  
16 assessments are at a preliminary stage and are ongoing. As of  
17 January 15, there were a total of approximately 4,575 reported  
18 refugees, approximately 790 damaged houses, and more than 460  
19 million dollars in preliminary and partial estimates of  
20 initial mitigation and emergency repair damages.

21 Funding and reconstruction efforts for the damages  
22 related to the earthquakes are at an early stage. The  
23 Governor has requested and the President has approved, as  
24 detailed by the Oversight Board, a declaration of -- major  
25 disaster declarations for 16 municipalities, which include



1 Adjuntas, Cabo Rojo, Corozal, Jayuya, Lajas, Lares, Maricao,  
2 San German, San Sebastian, Villalba, Ponce, Guanica,  
3 Guayanilla, Yauco, Utuado and Pinuelas. As the Oversight  
4 Board mentioned, this allows FEMA's public and private  
5 assistance programs to become available to these  
6 municipalities.

7 As to the school system, the Commonwealth has  
8 approximately 856 public schools. Inspections for these  
9 schools are ongoing. As of January 29, as of today, the last  
10 information that we have from the Department of Education is  
11 that approximately 383 schools have been deemed apt to reopen.  
12 And out of these, 228 schools have been inspected, evaluated,  
13 and certified by licensed engineers and are reopening. These  
14 schools are in the regions of Arecibo, Humacao, San Juan,  
15 Bayamon and Caguas.

16 THE COURT: I'm sorry. Can you just explain again,  
17 the 386 number is what?

18 MR. MARINI BIAGGI: Three hundred and eighty-three  
19 are schools that, from initial inspections, they could  
20 potentially reopen soon; but out of those 383, 228 have been  
21 certified and are available to open immediately.

22 THE COURT: Thank you.

23 MR. MARINI BIAGGI: Inspections and evaluations for  
24 the remaining schools continue, and as of January 17th,  
25 approximately 668 schools have been inspected, with

1 assessments underway. The Department of Education expects to  
2 announce additional school openings soon.

3 While the inspections have not yet been completed,  
4 the Department of Education estimates that, as of now,  
5 approximately 212 schools may reopen partially, and 57 schools  
6 will need repairs prior to reopening. Current --

7 THE COURT: I'm sorry. Are you going on to a  
8 different topic or still on education?

9 MR. MARINI BIAGGI: I'm still on education, Your  
10 Honor.

11 Current inspections to the schools are being  
12 performed by licensed engineers and consist of visual  
13 inspections of structural and other defects. Estimates of  
14 damages as to the school system are preliminary, and range  
15 from 40 to 50 million for emergency and mitigation repairs,  
16 and in the range of 1.5 to 2 million for more permanent  
17 repairs. As of today, repairs have not yet started for the  
18 most part.

19 As to the schools in the southern part of Puerto  
20 Rico, and most affected by the recent earthquakes, the  
21 Department of Education is evaluating alternatives to serve  
22 the affected students and expects announcements to be made  
23 soon. Among the alternatives being considered are the use of  
24 mobile classrooms, tents, or renting temporary locations that  
25 comply with FEMA's requirements to accommodate the students

1 temporarily.

2 I'll move on. Unless Your Honor has any questions on  
3 education, I'll move on to PREPA.

4 THE COURT: I do have a follow-up. I'm glad you did  
5 speak a minute ago about the evaluation of alternatives to  
6 serve students. You know, it has been some time --

7 MR. MARINI BIAGGI: Right.

8 THE COURT: -- since the schools were supposed to  
9 reopen. And so am I correct in understanding that, as of now,  
10 there's not in place any sort of internet-based, camp-based or  
11 distance programming or curriculum being delivered to students  
12 by the faculty of these various schools?

13 MR. MARINI BIAGGI: Speaking as to the southern part  
14 of Puerto Rico only, because the schools that are reopened are  
15 not in the southern part of Puerto Rico. They are in the  
16 regions that I mentioned.

17 THE COURT: When did the schools in the north reopen?

18 MR. MARINI BIAGGI: Some were programmed to reopen  
19 last week, and I think there was an announcement yesterday.  
20 So they're in the process of reopening in the next few days.  
21 And there's some reopening at different stages as additional  
22 schools are announced.

23 THE COURT: And there hasn't been any alternative  
24 reprogramming in the north either as till now?

25 MR. MARINI BIAGGI: Right. And as to the south, the

1 | last information I had as of yesterday are that, among the  
2 | alternatives being considered are those I mentioned of  
3 | bringing mobile classrooms, putting in tents, but those are  
4 | not in place as of today.

5 |           THE COURT: And is there any timing expectation for  
6 | delivery of any sort of instruction to these children in the  
7 | south?

8 |           MR. MARINI BIAGGI: Your Honor, I can come back with  
9 | more detail. The last that I have is that announcement should  
10 | be made within the next one to two weeks in terms of how this  
11 | will be structured for the south.

12 |           This is developing daily. There were schools  
13 | announced yesterday that could open. There were another set  
14 | that will announced today. So information is changing on a  
15 | daily basis.

16 |           THE COURT: I understand that it's a very demanding  
17 | situation, not only in education but in many, many aspects of  
18 | human services. But, you know, I can tell you, I have a deep  
19 | concern as a person and for the people --

20 |           MR. MARINI BIAGGI: Sure.

21 |           THE COURT: -- of Puerto Rico about the loss of  
22 | education opportunities for the children. And then also  
23 | particularly for just the displaced children in the camps  
24 | having, you know, something to do in this stressful time. So  
25 | if there is anything more that you can say in the near term

1 | than you have said now, if you can file an informative motion,  
2 | I would be grateful.

3 |           MR. MARINI BIAGGI: I will. And AAFAF and the  
4 | government obviously share the Court's concern and are doing  
5 | everything they can to remedy the situation. But I'll provide  
6 | an update when new information becomes available as to the  
7 | school systems.

8 |           THE COURT: Thank you. I'm grateful.

9 |           MR. MARINI BIAGGI: But I'll move on to PREPA, if  
10 | that's okay.

11 |           THE COURT: Yes. Oh, do you have anything to say  
12 | about relief to the people who are in the camps? Are they  
13 | getting -- is there some sort of shelter? Are they getting  
14 | food and sanitary supplies? I'd heard in the beginning that  
15 | there was a real concern about people camping in places that  
16 | don't have proper sanitary facilities and a risk of disease.

17 |           MR. MARINI BIAGGI: Sure. I can speak high level,  
18 | and I'd be happy to provide more detail as well in our  
19 | reports.

20 |           There are camps run by PREPA -- I'm sorry, by FEMA  
21 | and by the National Guard. Our understanding is that they are  
22 | fully serviced. Supplies are reaching the south. And I can  
23 | provide more detail if Your Honor wants, but my understanding  
24 | is that they are fully serviced either camps provided by FEMA  
25 | or by the National Guard. National Guard --

1 THE COURT: Well, if you could provide any further  
2 detail you have in confirmation of this assurance --

3 MR. MARINI BIAGGI: Sure.

4 THE COURT: -- I'd be grateful.

5 MR. MARINI BIAGGI: I will.

6 THE COURT: Thank you.

7 MR. MARINI BIAGGI: As to PREPA, the Costa Sur power  
8 generation unit suffered damage to its infrastructure and  
9 damage assessments are ongoing. These damage assessments are  
10 divided in two tiers. First, PREPA is assessing visible  
11 damages to, for example, tanks, boilers, structures. A  
12 completion of that assessment is due within the next two to  
13 three weeks. Thereafter, PREPA will undertake a further  
14 assessment for nonvisible damages to infrastructure to better  
15 assess the cost of damages, insurance coverage, claims and  
16 determine any need to rebuild.

17 To address the generation affected through the Costa  
18 Sur Power Plant, PREPA is drafting an RFP to solicit up to 500  
19 megawatts of emergency and new generation to help make up for  
20 the approximately 800 million -- megawatts currently lost from  
21 Costa Sur. The current goal is to have an RFP completed and  
22 issued during February.

23 As to HTA, as a result of the earthquakes, a few  
24 segments of roads have been closed, including a road closing  
25 at short segments of two major roads. The major road segments

1 closed include Highway 52 at kilometer 156 in Ponce, Highway 2  
2 at kilometer 218 in Pinuelas, and Highway 2 at kilometer 153.9  
3 in Mayaguez, all already reopened. Emergency repairs to  
4 reopen these segments were implemented using the Federal  
5 Highway Administration's ER funds, including an initial five  
6 million allocation of quick release from these funds.

7           HTA has estimated emergency repair costs of  
8 approximately 16.2 million and permanent repairs of 19  
9 million. Of these amounts, about 12 million are estimated to  
10 require state funds, mostly for permanent repairs matching and  
11 engineering services. HTA has requested the Commonwealth to  
12 assign these funds not covered by the Federal Highway's ER  
13 program. Damage estimates are based on events to date, and as  
14 with other areas, they may continue to increase as assessments  
15 are done.

16           As to post hurricanes Maria and Irma efforts, since  
17 our last presentation, three new developments have occurred.  
18 The Oversight Board already addressed two, HUD's requirements  
19 to access additional funding and FEMA's flexibility on some  
20 areas to request funding for permanent projects. So I'll  
21 focus just on one additional new development.

22           In terms of additional funding since our last report,  
23 over 46 million -- 47 million has been obligated for about 145  
24 new projects related to the recovery and reconstruction of  
25 Puerto Rico. These funds were obligated between December 10

1 and January 16th of this year.

2           These latest grants are obligated, among other areas,  
3 as follows: About 16.7 for debris and waste removal; about  
4 14.3 million for repairs to roads and bridges; about 11.8  
5 million for emergency protective measures; about 3.8 million  
6 for repairs to parks and recreational facilities; about 1.9  
7 million for repairs to public utilities; and about 1.3 million  
8 for repairs to public buildings and equipment.

9           Before finishing this report, I would just like to  
10 inform the Court that AAFAF, COR3, FEMA and others continue  
11 working in conjunction with the Government of Puerto Rico to  
12 seek ways to optimize and improve the flow of funds and legal  
13 compliance with the Federal Government's requirements. PREPA,  
14 COR3, FEMA and AAFAF generally have weekly meetings attended  
15 by representatives of these entities to focus on permanent  
16 project formulation and funding, provide status and progress  
17 updates, and to deal with and manage the current damages  
18 relating to the earthquakes.

19           Unless Your Honor has any other questions, I will  
20 supplement the matters that Your Honor asked in writing and  
21 answer any questions that Your Honor may have.

22           THE COURT: Thank you, Mr. Marini.

23           MR. MARINI BIAGGI: Thank you, Your Honor.

24           THE COURT: Are there any other comments by way of  
25 status reports?



1 (No response.)

2 THE COURT: We'll move to the next Agenda item, which  
3 is II, the uncontested matters.

4 So I gather that the renewed Motion for Undisputed  
5 Payment is not going forward here, because there has been an  
6 order filed on presentment. And so now we will go to the  
7 Omnibus claim objection items.

8 MS. STAFFORD: Good morning again, Your Honor. Laura  
9 Stafford of Proskauer Rose.

10 THE COURT: Good morning again.

11 MS. STAFFORD: I will begin with the 76th Omnibus  
12 Objection to Claims. This objection seeks to disallow proofs  
13 of claim that assert, in part, bonds that are duplicative of a  
14 master proof of claim and/or amounts for which HTA is not  
15 liable because the bonds the claimants purport to hold have  
16 already been refunded either through redemption or defeasance.

17 THE COURT: I need you to talk a little louder and a  
18 lot slower.

19 MS. STAFFORD: Yes. Thank you.

20 This objection was heard and granted at the last  
21 Omnibus hearing as to all but this one claim, which was filed  
22 by Cigna Health and Life Insurance Company, and that's claim  
23 number 19617. This claimant had reached out to us and asked  
24 for an adjournment in order to have more time to evaluate the  
25 objection and determine whether to file a response, which we

1 | agreed to, which is why it's still on the Agenda.

2 |           In light of the fact that no objection was received,  
3 | we would request that the Court grant the 76th Omnibus  
4 | Objection as to Proof of Claim number 19617 as well.

5 |           THE COURT: The Board's request is granted. The 76th  
6 | Omnibus Objection is sustained with respect to the Proof of  
7 | Claim of Cigna Health and Life Insurance Company, which is  
8 | number 19617, did you say?

9 |           MS. STAFFORD: That's correct, Your Honor.

10 |           THE COURT: And you'll submit a proposed form of  
11 | order?

12 |           MS. STAFFORD: Correct, Your Honor.

13 |           THE COURT: And this relates to docket entry 8961 in  
14 | case 17-3283?

15 |           MS. STAFFORD: That's correct, Your Honor.

16 |           THE COURT: Very well. So now we can move to Agenda  
17 | Item II.3.

18 |           MS. STAFFORD: Correct. As to the next several  
19 | uncontested items on the Agenda, which are Omnibus Objections  
20 | 96 through, I believe on the Agenda it's 122 -- there was  
21 | actually the 123rd Omnibus Objection that was also noticed for  
22 | hearing today, but it was inadvertently left off of the  
23 | Agenda. But as to each of these, 96 through 123, we received  
24 | a number of responses, each of which were adjourned to the  
25 | March 4th Omnibus hearing either by Order of the Court or by

1 notices of adjournment filed by the debtors last Wednesday and  
2 last Friday.

3 In the intervening period between last Friday and  
4 today, we've continued to receive responses on the docket, as  
5 well as mailing responses that were sent either to Prime  
6 Clerk, to the debtors, or to the UCC. As we did at the  
7 December hearing, we would like to adjourn the hearings as to  
8 those claimants who have submitted responses either on the  
9 docket or by mailing in the last few days until the March 4th  
10 hearing. And we would request that the Court grant the  
11 objections as to those claimants who have not submitted  
12 responses for each of these Omnibus Objections.

13 THE COURT: And so you're cueing up these motions on  
14 these Omnibus Objections as uncontested solely to the extent  
15 of claimants who have not responded at all, and you will  
16 provide proposed orders listing those specific claimants, with  
17 the implicit or explicit representation that these were  
18 noticed, it's been checked in all the technical respects --

19 MS. STAFFORD: Yes.

20 THE COURT: -- and there have not been responses.

21 MS. STAFFORD: That is correct, Your Honor.

22 THE COURT: On those terms, the motions are granted  
23 as to the Agenda items listed as II.3 to II.28, which covers  
24 the 96th through 122nd Omnibus Objections, and the docket  
25 numbers are listed in the Agenda.

1                   And then also the 123rd Omnibus Objection, what is  
2 the docket entry number for that, Ms. Stafford?

3                   MS. STAFFORD: It is 9576.

4                   THE COURT: And so also as to docket entry 9576, the  
5 123rd Omnibus Objection, and the debtor's directed to submit  
6 proposed orders listing the affected claims.

7                   MS. STAFFORD: Thank you, Your Honor.

8                   THE COURT: Thank you.

9                   The next item on the Agenda is the status conference  
10 on the Cobra Acquisition Motion for Allowance and Payment of  
11 Administrative Expense Claims.

12                  MR. VAN DERDYS: Good morning, Your Honor. Fernando  
13 Van Derdys for Cobra Acquisition.

14                  Your Honor, in this matter, Mr. Thomas McLish,  
15 co-counsel from Akin Gump, was going to address the Court  
16 through teleconference means.

17                  THE COURT: So Mr. McLish has requested to address by  
18 telephone?

19                  MR. VAN DERDYS: Yes. Yes, Your Honor, by motion.

20                  THE COURT: Oh, he's in New York.

21                  MR. VAN DERDYS: Okay. He's in New York. Right.

22                  THE COURT: Thank you.

23                  MR. VAN DERDYS: We're ready to answer any question  
24 the Court may have.

25                  THE COURT: All right. So should I -- Mr. McLish

1 will make a presentation and answer questions?

2 MR. VAN DERDYS: Yes, Your Honor.

3 THE COURT: Thank you very much.

4 Mr. McLish, good morning.

5 MR. MCLISH: Good morning, Your Honor. Tom McLish  
6 from Akin Gump Strauss Hauer & Feld on behalf of Cobra  
7 Acquisitions, LLC. I'm happy to answer the Court's questions.

8 Cobra's position, as we set forth in the filing that  
9 the parties made jointly pursuant to Your Honor's Order, is  
10 that it is not in the interests of justice to continue the  
11 stay of Cobra's claims in excess of 200 million dollars.  
12 Cobra's entitled to be paid contractually for that money, and  
13 it is prejudiced by having to wait further.

14 Regardless of the parties' differing views of the  
15 criminal proceeding and the FEMA analysis that is under way,  
16 we believe it's quite clear that significant progress could  
17 be made on discovery and otherwise toward resolution of  
18 Cobra's administrative claims while those matters proceed.  
19 We believe that neither the criminal proceeding nor the FEMA  
20 analysis are likely to have any significant or possibly any  
21 effect at all on Cobra's claims, but even if you agree with  
22 the -- with PREPA and the government parties that there is a  
23 possibility that those items may eventually have some impact  
24 on Cobra's claims, that doesn't justify staying the claims  
25 indefinitely. We should proceed now, make as much progress as

1 we can.

2           The Court does not have to decide now whether final  
3 resolution of Cobra's claims must await the final outcome of  
4 the criminal proceeding or the FEMA analysis. The goal should  
5 be -- in our view, respectfully, Your Honor, is to get our  
6 claims as fully litigated and resolved as possible so that  
7 when a plan is approved, we're not starting from scratch.  
8 It's -- the payment can be made and Cobra can begin to be made  
9 whole.

10           I would point out that the parties listed various  
11 factual issues that they think require discovery in their  
12 joint filing. You can read those and see that they do not  
13 overlap in any significant way with any of the issues that are  
14 part of the criminal proceeding. All those issues that the  
15 parties have listed are things that can be addressed without  
16 interfering with the criminal case and in no sense need to  
17 await the outcome of the criminal case before the parties  
18 should address them.

19           The suggestion has been made that perhaps witnesses  
20 will want to take the Fifth Amendment as a result of ongoing  
21 criminal proceedings, but we submit that that's conjecture.  
22 There's no actual evidence to believe that that's going to be  
23 the case.

24           Similarly, with the FEMA analysis that's going on,  
25 that is not going to resolve any of the issues that the

1 parties have listed as needed discovery. And the conduct of  
2 discovery into those issues is not going to interfere with the  
3 FEMA analysis. Again, the FEMA analysis, just like the  
4 indictment issue, is just something that PREPA is speculating  
5 may give them some new arguments as to why Cobra shouldn't be  
6 paid in full for the work that it indisputably completed to  
7 restore Puerto Rico's electrical grid.

8           So in our view, Your Honor, it is not only not in the  
9 interest of justice to continue the stay, it is manifestly  
10 unjust to do so in this situation where a company the size of  
11 Cobra is out in excess of 200 million dollars. And much of  
12 that money, Your Honor, is disputed, by which I mean -- and  
13 I'll give an example.

14           One of the issues in the -- that PREPA has raised is  
15 over the head count. So when Cobra would submit an invoice,  
16 say for -- hypothetically speaking here, for 50 workers on a  
17 given day, they worked on the lines and submitted an invoice  
18 to be paid for those 50 people. If there was some piece of  
19 paper in the file, in PREPA'S file, or someone reported there  
20 were 49 people, 49 Cobra workers on site that day, then PREPA  
21 would reject the entire invoice.

22           So in those instances, Cobra has been paid nothing,  
23 even though, in that example, it's agreed that Cobra had at  
24 least 49 workers on site that day. Cobra paid those people,  
25 is out that money, but has been paid zero because there's a

1 | dispute over one or two or however many employees were in  
2 | dispute.

3 |           So the -- vast sums are owed to Cobra, and Cobra's  
4 | entitled to be paid and is prejudiced by not being paid. And  
5 | it's, respectfully, not in the interest of justice to continue  
6 | delay towards resolution of those issues. I'm happy to answer  
7 | any of Your Honor's questions.

8 |           THE COURT: Thank you. I do have a primary question  
9 | here, which is, as I read PREPA's part of the submission,  
10 | PREPA is contending that an adverse outcome on the criminal  
11 | case, or rejection of bills by FEMA, would eliminate liability  
12 | for some significant portion, if not all of the outstanding  
13 | liability. Are you questioning PREPA's risk assessment as to  
14 | the likelihood of an adverse outcome, or do you read the  
15 | contractual documents differently from PREPA?

16 |           MR. MCLISH: Both, I believe, Your Honor. We do read  
17 | the contractual documents differently. The contractual  
18 | documents are quite clear that PREPA owes COBRA the money,  
19 | regardless of whether it is paid by FEMA -- whether PREPA is  
20 | reimbursed by FEMA, unless there's something that Cobra did  
21 | that prevented FEMA from reimbursing PREPA.

22 |           But here, we don't think there is any such thing, and  
23 | PREPA hasn't raised anything that would qualify for that. But  
24 | we also believe that there is no reason to think that the  
25 | criminal case could result in an outcome based on what's been



1 | alleged in the indictment where PREPA would be absolved of  
2 | paying COBRA for any of the work that it's done.

3 |           We think the only real issue is how much is Cobra  
4 | entitled to be paid, and it's certainly in the neighborhood of  
5 | 200 million dollars, if not more.

6 |           THE COURT: Thank you. I will hear from PREPA at  
7 | this point.

8 |           MR. MCLISH: Thank you, Your Honor.

9 |           MR. VAN DERDYS: Thank you.

10 |           MR. DAVIS: Good morning, Your Honor. Joseph Davis  
11 | of Greenberg Traurig on behalf of PREPA.

12 |           THE COURT: Good morning.

13 |           MR. DAVIS: It is a pleasure to be back in your  
14 | courtroom. I have been nominated by the government parties to  
15 | speak this morning. Assisting me will be Attorney Hadassa  
16 | Waxman from Proskauer, to the extent the Court has questions  
17 | about the pending criminal proceedings and how that might have  
18 | some impact on some of the issues here. Ms. Waxman is in New  
19 | York, and her smiling face at some point will probably appear  
20 | on the screen.

21 |           Your Honor, I'd like to address this in several  
22 | parts, and actually, I'd like to start with the question you  
23 | raised. Cobra has been paid in excess of a billion dollars,  
24 | so this is not a contractor who's gone without payment. It  
25 | has actually been paid in large part.

1           The pending criminal proceedings, as Your Honor is  
2 well aware, could have a material impact on the enforceability  
3 and the voidability of, in particular, the fourth and fifth  
4 amendments to the first Cobra contract and the entire second  
5 contract. The reason for that is there are not, surprisingly,  
6 certifications mandated under law signed by Cobra certifying  
7 that there was no illegal criminal activity in connection with  
8 obtaining a public contract.

9           So if, in fact, a guilty verdict were to be rendered  
10 against, in particular, Mr. Ellison, the former chief  
11 executive officer of Cobra during the time period in question,  
12 there is a distinct issue of this coming back to you as to  
13 whether the impact of that creates a voidable or void  
14 contractual amendment. These amendments are approximately,  
15 what, 900 million dollars -- well, excuse me, that -- 745  
16 million dollars are the two contract amendments at issue under  
17 the first contract, and then the entire second contract would  
18 also be deemed void, which is where many of the disputed  
19 issues arise.

20           So the criminal proceedings are anything but  
21 extraneous or irrelevant. And frankly, I've never seen a  
22 situation like this before, but like much of what goes on in  
23 these restructuring proceedings, we're tackling issues we've  
24 never seen before.

25           All of us have had cases where an issue has popped up

1 or a certain party may have a related criminal proceeding  
2 pending. I've never seen it before where the plaintiff is the  
3 party who has this issue, and now we're going to have to deal  
4 with the discovery and legal consequences of that in the event  
5 that it should not go well for the plaintiff.

6 That gets to my second point. This is being posited  
7 to you as if it were a complaint. Everything we're talking  
8 about is in complaint speak. Even the proposed schedules that  
9 have been attached to the status report, Cobra's makes  
10 reference to the government parties, PREPA, within 24 hours  
11 serving an answer.

12 Typically an answer requires a complaint. And a  
13 complaint is required under Rule 7001 of the Bankruptcy Code,  
14 which is applicable here, in the event that the party is  
15 seeking to recover money or property of the debtor, or to  
16 obtain an injunction or other equitable relief, or to obtain a  
17 declaratory judgment relating to the above.

18 Now, I confess we have not put this in our papers up  
19 until now because I think all the parties are trying to come  
20 to grips with what this motion is, but I would put it to the  
21 Court that this motion is seeking property of the debtor to  
22 repay alleged obligations by way of injunctive relief, which  
23 is to say to force PREPA to make payment now in the absence of  
24 any statutory authority otherwise, which is the classic  
25 definition of equitable relief. And of course, it's seeking

1 declaratory relief that some of these contracts are not void  
2 and that PREPA is obligated to make payment immediately.

3           While I certainly understand Cobra's concerns about  
4 getting paid soon for the stated reasons that they have put in  
5 the status report, it doesn't change the fact that under the  
6 law, they don't get paid until exit. And they have to  
7 demonstrate that they're deserving of payment in the first  
8 place, that payment is obligated.

9           As we put forth in the status report, this is not a  
10 matter that can be dealt with on the papers in the absence of  
11 significant discovery and significant factual testimony. Any  
12 time you're dealing with a dispute over hundreds of invoices,  
13 by definition, you're now digging into the facts. Your hands  
14 are going to get dirty to dig through all of those details.

15           There are head count issues that amount to over 80  
16 million dollars. And it's not as simple as some sort of a  
17 supporting declaration being sent to the Court saying, well,  
18 there's substantial compliance in the following 22 invoices  
19 and there's partial compliance under these ones. It's not  
20 going to work that way.

21           People are going to have to testify as to what  
22 happened, what the bonafides are of an invoice for which  
23 payment is seeking, whether appropriate support is there for  
24 payment, and whether PREPA is justified in not paying, or that  
25 PREPA is obligated to pay. This is a detailed analysis and

1 one that is --

2 THE COURT: So are you --

3 MR. DAVIS: -- going to put a burden on the parties,  
4 in particular PREPA right now, to even address these issues  
5 when it's not ripe for adjudication.

6 And I'm sorry. I don't mean to cut you off.

7 THE COURT: Just going to that detailed point for a  
8 minute, it's your representation that under these contracts,  
9 if, as Mr. McLish represents, it's undisputed there were 49  
10 people there, they're not entitled to 49, 50 -- 98 percent of  
11 the money, with only the other two percent being in play?

12 Your representation would be that if the count is  
13 allegedly off by one, you don't have to pay anything until  
14 there is a granular examination of how many people were  
15 actually on site?

16 MR. DAVIS: Your Honor, I think that a granular head  
17 count examination is going to be necessary for the  
18 overwhelming majority of these invoices. The way these  
19 contracts are set up is there's a per diem, if you will, on  
20 the cost of every worker who is alleged to have performed  
21 certain duties on a given date. An analysis of the invoices  
22 is the first step in figuring out how many people were  
23 supposed to be there. Then you go to the inspection reports  
24 to find out whether it has been certified that those people  
25 were, in fact, there.

1                   So if we're talking about the difference, this ends  
2 up being a fight over -- his example was 49 people were  
3 certified to have been there or confirmed to have been there  
4 and the invoice said 51 or 52. I can't imagine we're going to  
5 be burdening the Court for a long period of time --

6                   THE COURT: I sure hope not.

7                   MR. DAVIS: -- but my concern is the ones where  
8 you're going to see the opposite, where it says 62 people  
9 showed up and they only confirmed eight, or where an invoice  
10 for work performed on one line is identical to an invoice that  
11 was submitted for, performed on a different line.

12                  THE COURT: Okay.

13                  MR. DAVIS: That's the stuff I'm worried about,  
14 because I think that's going to be the meat of it. And this  
15 is just one of the subject areas. If this were the only one,  
16 that would be one thing. I mean, this is only one of the  
17 discrepancies, if you will. We gave you the laundry list  
18 of --

19                  THE COURT: Yes.

20                  MR. DAVIS: -- issues. I could repeat them, but I'm  
21 not sure --

22                  THE COURT: You don't need to.

23                  MR. DAVIS: -- it's worthwhile right now.

24                  THE COURT: In the interest of time, let me ask you a  
25 couple of direct questions here.

1 MR. DAVIS: Certainly.

2 THE COURT: First, you gave us an overview of your  
3 theory on the potential impact of a conviction in the criminal  
4 case --

5 MR. DAVIS: Yes, Your Honor.

6 THE COURT: -- on the representation that's in the  
7 contract and liability under the contract. Is it your  
8 interpretation of the FEMA arrangements that if FEMA declines  
9 to pay something, then PREPA has no obligation to pay it?

10 MR. DAVIS: I think we need to see the basis of  
11 FEMA's determination before I can report that to you. There  
12 is a difference between what is FEMA compliant, if you will,  
13 and susceptible to reimbursement by FEMA and what a contract  
14 would say -- what a contract would obligate.

15 THE COURT: So it could be --

16 MR. DAVIS: I acknowledge that. It could be that  
17 there is a delta problem, if you want to think of it that way,  
18 between what FEMA would pay and what PREPA may be obligated to  
19 pay. This is one of the reasons why, under the law, payment  
20 isn't due until exit, because if it turns out PREPA has to go  
21 forth and raise enough money to pay off administrative  
22 obligations that are different from what the expectation was  
23 from FEMA, the parties need time to prepare that.

24 But there is, however, in the contract a provision  
25 that says if the failure of FEMA to obligate certain funds is

1 the sole responsibility of Cobra, then PREPA does not have to  
2 pay. So that's why I say you have to see what FEMA says  
3 before we can get to the level of detail that Your Honor is  
4 looking for, which is whether PREPA automatically has a  
5 financial obligation to pay under its contracts if FEMA is not  
6 reimbursing for certain proceeds.

7 THE COURT: Okay. So it's not a zero sum issue as to  
8 any refusal by FEMA means PREPA is off the hook. It's  
9 factually sensitive and sensitive to contract language?

10 MR. DAVIS: Yes, Your Honor.

11 THE COURT: So it's a possibility that has a range?

12 MR. DAVIS: Yes, Your Honor. And FEMA has been  
13 undergoing this analysis since roughly September, August,  
14 probably August, and it's due May 29.

15 THE COURT: And as to Mr. McLish's or Cobra's concern  
16 that we could get to a point where a PREPA plan is being  
17 confirmed and all of the Cobra issues are still in play, am I  
18 correct in understanding that in order to get confirmed, PREPA  
19 would have to be paying or otherwise satisfactorily providing  
20 for the contingency of having to pay these outstanding  
21 disputed amounts to Cobra to be able to get confirmed?

22 I realize that's a very sort of high level conceptual  
23 summary, but --

24 MR. DAVIS: It --

25 THE COURT: -- is there a scenario where you can get



1 confirmed and not have anything aside to pay these disputed --

2 MR. DAVIS: Your Honor, I need to defer to  
3 Mr. Bienenstock on that one, because that's a plan of  
4 arrangement issue and not a Cobra, if you will, issue.

5 THE COURT: Mr. Bienenstock, what kind of assurance  
6 can you give Mr. McLish that you're not going to take all the  
7 money away and leave his contested claim unaddressed?

8 MR. BIENENSTOCK: Your Honor, pursuant to Title III,  
9 which incorporates 1129 of the Bankruptcy Code, a plan can't  
10 be confirmed unless, among other things, all administrative --  
11 all allowable administrative expenses are paid in full in  
12 cash, and usually it's either on the effective date or on  
13 the -- so many days after the claim is finally allowed and  
14 there is no further appeal necessary.

15 So as a matter of the confirmation statute and  
16 jurisprudence, we would have to show the Court that it's  
17 feasible that if and when Cobra's claim is allowed in the  
18 amount they say it will be allowed, that we would be able to  
19 pay it in cash, in full, under the terms of the plan. We  
20 would not have to show, for instance, that we have the money  
21 sitting there in some sort of escrow account, but we'd have  
22 to show Your Honor that it's feasible, which is basically  
23 commercially reasonable, that if and when their claim is  
24 allowed, we would be able to pay it in full, as we pay our  
25 other expenses and obligations under the Plan.

1 THE COURT: Thank you.

2 MR. BIENENSTOCK: Yes.

3 THE COURT: All right. So if you want to sum up,  
4 I'll hear anything further briefly that Mr. McLish wants to  
5 say. And then I think I know what I want to do.

6 MR. DAVIS: Okay. Quickly, Your Honor, as we have  
7 put forth in the status report, it would be the position of  
8 the government parties, particularly PREPA, that this be  
9 delayed at least until the June Omnibus, at which point we  
10 will know what FEMA has done with the FEMA analysis.

11 There's a higher likelihood that there may be some  
12 determination, verdict in the criminal matter. And the  
13 parties will be in a better position to understand what the  
14 plan process is going to be given the discussion we had  
15 earlier today and how the true timing is for purposes of  
16 getting PREPA out of the Title III proceedings.

17 THE COURT: Thank you.

18 MR. DAVIS: Thank you.

19 THE COURT: Mr. McLish, did you wish to say anything  
20 further?

21 I think we need to turn a microphone on in New York.  
22 Would you say testing, testing?

23 MR. MCLISH: Testing, testing.

24 THE COURT: Okay. You're on.

25 MR. MCLISH: Okay. Sorry about that. Yes, Your

1 Honor. Thank you.

2 On that last point, I -- FEMA estimated that it would  
3 complete its analysis that it was directed to do by the OIG by  
4 the end of May. There's no reason to think that -- well, I  
5 guess they predicted that, but it's easily conceivable that  
6 they will miss that day. Obviously FEMA has tons of things  
7 going on, including lately in Puerto Rico.

8 So there is no hard deadline for FEMA's analysis, and  
9 Cobra has no ability to control or influence when that  
10 happens. FEMA's not a party here. So we don't think it makes  
11 any sense to just stay things indefinitely waiting for FEMA to  
12 do something that it may or may not do.

13 Same thing with the indictment. It's important to  
14 remember that Cobra is not indicted. Cobra has not been  
15 charged with anything. Cobra is not a party to the criminal  
16 proceeding in any way and has no control over or influence on  
17 when the criminal proceeding might get resolved or how it  
18 might get resolved. So it's manifestly unfair, in our  
19 opinion, to allow this case to stagnate while things that we  
20 have no control over go on potentially indefinitely.

21 With respect to the argument about whether a criminal  
22 conviction could result in Cobra not being entitled to any  
23 money, as we've explained in our papers, the contracts address  
24 when rescission is appropriate in a criminal context. The  
25 first contract says that rescission -- PREPA can rescind the

1 contract if Cobra is convicted of one of a list of enumerated  
2 crimes. Well, Cobra hasn't been charged with any, so that's  
3 not a possibility.

4 Under the second contract, the similar clause doesn't  
5 call for rescission at all in the event of criminality. So we  
6 think the contract makes clear that Cobra is entitled to  
7 payment.

8 One other point I wanted to address. There was a  
9 discussion about, well, we have to dig through all these  
10 issues on head count, et cetera, and dig down into the facts  
11 about every invoice, but the contracts unsurprisingly say what  
12 Cobra has to do to get paid. And it has to prepare an  
13 invoice. It has to submit the invoice. It has to submit a  
14 certification with that invoice. It has prescribed language  
15 that says this is what we're owed. The contract says, unless  
16 there are specific reasons, PREPA has to pay that invoice.

17 Now, if PREPA wants to now come and say, well, we  
18 don't believe your certification anymore, or we think you  
19 submitted a certification that was wrong, or your invoice was  
20 wrong, they can make that as an affirmative claim and ask for  
21 the money back. But under the contract, Cobra is entitled to  
22 be paid.

23 Bottom line though, Your Honor, is to the extent  
24 there are these disputes, let's start resolving them. Let's  
25 get going on it. As was said, the plan, the ultimate

1 reorganization plan can't be approved until this claim is  
2 resolved. So why are we waiting? Let's get started. Let's  
3 do it.

4 If aspects of the criminal proceeding become  
5 problematic, we can come to the Court. If the prosecutors,  
6 which they haven't yet, if the prosecutors have a problem with  
7 the parties conducting discovery into these areas, I am sure  
8 they'll inform the Court. But there's simply no reason to  
9 continue to delay at this time.

10 Thank you, Your Honor.

11 THE COURT: Thank you. Thank you both.

12 Given that there is at least one conference and  
13 further developments in the criminal case to be expected in  
14 the near term, and there is a target date for a report from  
15 FEMA, and in light of what appear to be very substantial  
16 transaction costs to discovery in preparation for resolution  
17 of the factual disputes that might or might not be mitigated  
18 by results in the criminal case and the FEMA review, the  
19 current stay on this administrative expense claim is  
20 continued.

21 And I will put this on for a further status report at  
22 the June Omni, and require the parties to submit a joint  
23 status report in writing a week before the June Omni, and  
24 we'll see whether either of those other matters is moot and  
25 whether the parties have either gotten any closer together or

1 made clear their positions as to the extent to which FEMA  
2 decisions and results in the criminal case could affect the  
3 obligation of PREPA to pay the outstanding Cobra invoices.  
4 Thank you.

5 So that takes care of Agenda Item III.1. And the  
6 next Agenda item is the amended motion regarding alternative  
7 dispute resolution procedures. And I am inviting Judge Dein  
8 to join me on the bench for that. And this relates to docket  
9 entry 9718.

10 Good morning again, Ms. Stafford.

11 MS. STAFFORD: Good morning again, Your Honor. Laura  
12 Stafford of Proskauer Rose for the Financial Oversight and  
13 Management Board.

14 I'd like to initially reserve a couple of minutes for  
15 rebuttal after we hear from the objectors later.

16 THE COURT: Thank you.

17 MS. STAFFORD: So over the past several months, the  
18 debtors have engaged in productive conversations regarding  
19 these alternative dispute resolution procedures with a number  
20 of parties, including AAFAF; the UCC; Mr. Mudd, who is counsel  
21 for Salud Integral en la Montana, one of the objectors here;  
22 as well as the Administrative Office of the Courts.

23 Those conversations yielded the ADR framework we  
24 proposed in this motion where, first, debtors and claimants  
25 exchange offers to settle. Second, the parties participate in

1 evaluative mediation. And if neither of these processes  
2 result in any resolution of claims, claimants have three  
3 options where they may either liquidate their claim before the  
4 Commonwealth courts; proceed before the Title III Court; or  
5 upon their consent, liquidate claims using binding  
6 arbitration.

7           The proposed procedures incorporate not only the  
8 invaluable input we've received from AAFAF and the  
9 Administrative Office of the U.S. Courts, but also elements  
10 requested by both the UCC and SIM, the only two objectors to  
11 the motion.

12           The UCC has long advocated the use of binding  
13 arbitration to resolve unsecured claims, much like the ADR  
14 procedure that was utilized in Detroit. The debtors' proposed  
15 ADR procedure incorporated that suggestion by including  
16 binding arbitration, which offers an efficient and practical  
17 means for resolving general unsecured claims. The proposed  
18 ADR procedures also reflect Mr. Mudd's suggestion that  
19 Commonwealth judges assist in the resolution of these claims  
20 in that they encourage the use of the Commonwealth court  
21 system to liquidate unsecured claims.

22           We view that approach as particularly appropriate  
23 here, in light of the fact that the vast majority of the  
24 claims that may be referred to ADR arise out of litigations in  
25 Commonwealth courts. And we think the Commonwealth courts

1 are, of course, uniquely suited to resolving the issues that  
2 those claims might raise.

3           Before filing this motion, as I noted, we had a  
4 number of comments and edits to our proposal from the UCC, and  
5 we accepted the bulk of those suggestions which are reflected  
6 in the proposed procedures before the Court. Notwithstanding  
7 these efforts and the fact that both of the objecting parties  
8 are broadly supportive of the ADR motion, we do have a few  
9 limited objections that remain before the Court today.

10           There's three primary issues that are raised, and the  
11 first of those relates to the selection of claims to be  
12 included in the ADR process. We understand that the UCC wants  
13 as many claimants as possible to have the opportunity to  
14 consider a settlement offer from the debtor, and accordingly,  
15 they've suggested that any claimant be permitted to seek to  
16 participate in the first two phases of the procedure, which is  
17 the offer exchange and the evaluative mediation.

18           We understand the UCC wants this and we think it's a  
19 very laudable goal, but we think it's simply impractical.  
20 This process was designed for an expected volume of 10 to  
21 15,000 claims. To make it available to virtually the entire  
22 claims registry, which consisted of well over a hundred  
23 thousand claims, would impose significant burdens on the  
24 debtors and on the Court, which, under the procedures, would  
25 select the mediators who would participate in that process.



1           More importantly, we don't think there is any real  
2 benefit to the changes that the UCC proposes because the  
3 debtors are always happy to engage in settlement discussions  
4 with willing claimants, but we think those discussions are  
5 more appropriately handled in the context of ordinary claims  
6 reconciliation processes. And there's no need for them to be  
7 involved in the formal ADR process in order to have those  
8 conversations.

9           The second objection -- the second major issue that  
10 the objections raise related to the evaluative mediation  
11 procedures. First, the same request, that Commonwealth court  
12 judges be utilized as mediators. The debtors very much  
13 appreciate both the generous offer of the Commonwealth court  
14 judges to serve in that role and Mr. Mudd's efforts to secure  
15 mediators.

16           However, as noted earlier, the procedures already  
17 are making ample use of the Commonwealth court's resources,  
18 and its expertise, by providing an avenue for claimants to  
19 resolve and liquidate their claims before those Commonwealth  
20 courts. And we think it's most appropriate for the Court, in  
21 its discretion, to select the mediators who will resolve these  
22 claims as the proposed procedures currently provide.

23           We would note that the UCC also requests that  
24 evaluative mediation procedures be modified to provide that  
25 the parties submit mediation statements, and we think that

1 prescription will prove to be unnecessary because of the  
2 amount of information that we anticipate will be exchanged  
3 during the offer and exchange process.

4 We anticipate that all the information that would be  
5 needed to evaluate a claim would be exchanged during that  
6 process. And we think that in light of that, requiring the  
7 parties to additionally provide mediation statements is likely  
8 to be burdensome without a real additional benefit.

9 THE COURT: May I just say something about that?

10 MS. STAFFORD: Yes.

11 THE COURT: And in the interest of efficiency, I know  
12 I tend to front issues --

13 MS. STAFFORD: Yes.

14 THE COURT: -- and my intentions. Judge Dein and I  
15 both feel that having a mediation statement from each side of  
16 no more than, I think we're targeting it at seven pages,  
17 double spaced, will be very helpful to the mediator, because  
18 otherwise the mediator is going to have to marshal and find a  
19 road map through correspondence and submissions.

20 And so for each side to be able to bottom line its  
21 view of the issues, and if it's a confidential mediation  
22 statement, its parameters is something that can help make the  
23 evaluator's work much more efficient. So frankly, it's my  
24 intention to add that to the process.

25 MS. STAFFORD: Understood, Your Honor. And we

1 appreciate that. If it's helpful, then we're happy to include  
2 it.

3 THE COURT: Thank you.

4 MS. STAFFORD: The last set of objections are related  
5 to binding arbitration. The first of those objections relates  
6 to the requirement that claimants who elect to participate in  
7 binding arbitration pay 50 percent of the cost for that  
8 arbitration.

9 It's our strong view that modification of this  
10 provision is not warranted for at least two reasons. Most  
11 importantly, no claimant is obligated to participate in  
12 binding arbitration. It's entirely optional.

13 If they do not wish to or cannot afford to pay for  
14 binding arbitration at the rates that will be determined once  
15 we have selected an ADR provider, they have two other paths  
16 available for them to resolve their claim, either at the  
17 Commonwealth courts or before the Title III Court. And in  
18 each instance, they would be expected to shoulder the burden  
19 of their own expenses to present their case in those two  
20 forums. Claimants' due process rights are, therefore, not  
21 impacted by the requirement of cost sharing.

22 Requiring parties to share in the cost of binding  
23 arbitration is also consistent with procedures that have been  
24 followed by other large municipal debtors, including the City  
25 of Detroit, and there's no reason to treat the debtors here

1 any differently by asking them to shoulder more of the cost  
2 than was asked of other municipal debtors.

3 And given the sheer volume of claims that have been  
4 filed against the debtors, and the number that may ultimately  
5 proceed through arbitration, forcing them to shoulder either  
6 the entire burden or even a significant share of the burden  
7 could render the cost of arbitration prohibitively expensive  
8 for the debtors.

9 The remaining two objections that the UCC raised are  
10 with respect to binding arbitration, are both easily disposed  
11 of. The first, because it's facially improper. The UCC is  
12 asking the Court to provide that -- the Court to Order the  
13 debtors to participate in binding arbitration, even when they  
14 have expressly refused to consent to same. And that  
15 modification would violate due process, and we think it should  
16 be rejected.

17 And the third objection related to consultation  
18 rights regarding the selection of an ADR provider, which we've  
19 already included in our revised proposed procedures. So we  
20 don't think there is any further dispute between the parties  
21 on that. Unless the Court has any questions --

22 THE COURT: Just one moment. This is fronting an  
23 administrative concern that we have.

24 Your Section One in the procedures, when it speaks of  
25 transferring claims in, is unclear to us as to whether you

1 just plan to file, say, a hundred ADR notices with your  
2 initial offer in them on the docket and walk away from that,  
3 and later give some status reports that may or may not map  
4 back to that, or whether at the time you are initiating this,  
5 you will file a notice saying you are initiating this with a  
6 table that marshals core information about the claimants.

7           You can probably guess from my tone of voice which  
8 one I would prefer. And we have some thoughts about data  
9 points that we'd like included in that table because, of  
10 course, once they get to the evaluative mediation, we're going  
11 to need to be able to track. And we also want to have the  
12 ability to see what's in the pipeline and see what trends are  
13 as the status reports come in as to the things that are being  
14 resolved and not.

15           MS. STAFFORD: Completely understood. And happily,  
16 the second option was the one we had in mind, and it sounds  
17 like that's the one that the Court would like.

18           So we had in mind to provide a notice on the docket  
19 that was a table of claims that we intend to send in to the  
20 ADR procedures. We're happy to take any instruction from the  
21 Court as to what should be included in that notice.

22           And then the notice that we will send to claimants is  
23 the one that was attached to the motion, and that would  
24 include the specifics of the offer that was being made to  
25 them.

1                   THE COURT: Very good. And can I also assume that  
2     you don't intend to take things that are currently in claim  
3     objection response mode and put them into the ADR process  
4     before this hundred day initial period?

5                   We are counting on some time to be able to build our  
6     machine and develop operational principles and staff it before  
7     things start coming through the pipeline. So will the hundred  
8     day mark be the mark for the first time anything is designated  
9     to go into --

10                  MS. STAFFORD: We're happy to proceed that way. And  
11     we do have a handful of claims that we've identified as  
12     potentially suitable for these procedures that came up in the  
13     December and the January Omnibus Objections, but we're happy  
14     to adjourn their hearings for a sufficient period of time so  
15     that we're able to meet the 100-day requirement and not  
16     overburden the Court by sending things in before things are  
17     ready, if that makes sense.

18                  THE COURT: That would be helpful to us.

19                  MS. STAFFORD: That's great.

20                  THE COURT: And as to the number of 10 to 15,000, are  
21     these claims that have already been filtered through Omnibus  
22     objections, or do you expect to try to filter them out further  
23     through Omnibus objections before cueing them up for ADR, or  
24     are these -- is this a hard number that you expect to take  
25     into ADR?

1 MS. STAFFORD: I think that is a hard number that we  
2 expect to take into ADR. Those are, for the most part, ones  
3 that have not been Omnibus objections and instead have  
4 provided enough information to suggest that they are suitable  
5 for these procedures at this moment.

6 THE COURT: And as you can imagine, we keep trying to  
7 figure out what's going to come in. So we ask you questions  
8 and you say "I don't know yet", and so --

9 MS. STAFFORD: Right.

10 THE COURT: But here's another question, trying to  
11 get a hint here: Are you selecting these things, these  
12 claims, having in mind that the plan that has been proposed  
13 now -- and typically a plan would have a convenience class, so  
14 that we might be able to expect that claims that would fall  
15 into a convenience class would not be the sort that would be  
16 coming through this process?

17 MS. STAFFORD: We've had conversations about whether  
18 it makes -- whether that convenience class may affect the body  
19 of claims -- the convenience class in the currently proposed  
20 plan may affect the body of claims that would go into ADR, but  
21 I don't think we have clarity on that yet.

22 THE COURT: Thank you for your candor about the lack  
23 of clarity on that at this point.

24 Also, on the initial offer and counter offer in the  
25 first phase of it, you have deadlines for the first exchange,

1 but after that, no particular deadlines. And so we were  
2 wondering whether it would be helpful to you and to the  
3 claimants to have some more deadlines built in so that people  
4 are not waiting forever to hear.

5 MS. STAFFORD: Understood. And I think that does  
6 make sense. I may want to confer with our other claims  
7 reconciliation -- or other folks involved in claims  
8 reconciliation to figure out what exactly those should be, but  
9 I think it makes sense to include something like that.

10 THE COURT: And I'll come back to this when I have  
11 heard everybody and give you my editorial shopping list, but  
12 as a head's up, I think there's also missing from our  
13 operational perspective some clear marker for the termination  
14 of the offer exchange procedure and initiation of the  
15 evaluation phase. And so you might want to think about some  
16 certification that gives us a clue that it's about to come  
17 across our doorstep.

18 MS. STAFFORD: We would be happy to make sure that we  
19 have some notice to make sure that you are ready for them when  
20 they come in.

21 THE COURT: Okay. Great. That is it for my  
22 questions at this point.

23 Oh, I'm sorry. One more. The current procedures  
24 seem to indicate that if a claimant -- say that a claimant is  
25 only supposed to pick Commonwealth adjudication or



1 arbitration, if they're not opting to go to Title III  
2 litigation, but if they happen to tick off both boxes, the  
3 default result will be going into arbitration, which is the  
4 higher up-front cost option.

5 And so, one, is that really what you intend, and can  
6 you give me a little insight as to why? And two, if it is  
7 what you intend, the paperwork will need to be really clear to  
8 the claimants that that will happen.

9 MS. STAFFORD: That was our intention, to have  
10 claimants be automatically shunted into binding arbitration,  
11 to the extent they had selected that they were -- selected  
12 both, because we believed that we had an indication that they  
13 had, in fact, consented to binding arbitration.

14 If the Court would prefer that the default go the  
15 other way, I don't think we have a strong view on that.

16 THE COURT: Well, my preference is that there be  
17 clarity. And to the extent it would be useful to you all to  
18 rethink what that looks like, I invite you to do that. But it  
19 should be clear that, to somebody who checks both boxes, that  
20 the next voice they hear will be from the arbitration process  
21 and it will have a bill for half the invoice with it.

22 MS. STAFFORD: Okay. Understood, Your Honor.

23 THE COURT: Okay. Thank you.

24 MS. STAFFORD: Thank you.

25 THE COURT: Who's next?

1                   Mr. Despins. I'm sorry. You didn't have any more --

2                   MR. DESPINS: I can see Mr. Mudd is hiding in the  
3 back of the courtroom.

4                   THE COURT: He's not hiding. He's waiting from the  
5 back row, but he's graciously letting you go first.

6                   MR. DESPINS: Yes. I appreciate that very much, Your  
7 Honor. For the record, Luc Despins with Paul Hastings for the  
8 Committee.

9                   Very briefly, because I know you've read the  
10 objections, these are proposed improvements. And the first  
11 one is allowing more people into this exchange of information,  
12 evaluation process. We set -- we knew that there would be a  
13 flood gate argument there, so we said, as a fallback, could we  
14 at least provide that the people who have litigation pending  
15 are automatically allowed to participate in just that aspect  
16 of the ADR?

17                   And the reason we're raising these issues, Your  
18 Honor, is we're not riding on a clean slate here. There has  
19 been a history of delayed payment and delayed determination of  
20 claims. We know -- I know personally of stories involving  
21 more than ten years of such, you know, horror stories. And,  
22 therefore, this is not the run-of-the-mill case.

23                   And I think that this type of thing, this type of  
24 suggestion allows people to feel that they will be included in  
25 the process, even though there are no guarantees they will be

1 successful. So that's our proposed improvement number one,  
2 which is fine. If we can't have everyone, because we don't  
3 want -- I understand the point, we don't want the trillion  
4 dollar claim to go into that kind of process. I will use that  
5 as an example. Or claims that have really no basis  
6 whatsoever.

7 But the people who have litigation claims already  
8 pending, it doesn't mean that they are necessarily  
9 meritorious, but they have invested enough to start that, or  
10 to have that. So, therefore, we would say that there should  
11 be that small modification.

12 The next one on arbitration, I want to be clear, we  
13 are not asking for the Court today to put a provision in  
14 saying that anyone who raises their hand will get arbitration.  
15 We want Your Honor to have the discretion to entertain such  
16 request in the future, both as to cost and as to arbitration,  
17 if -- in your discretion.

18 So I don't see how that could be wrong, because there  
19 may be cases where you look at this and say, my God, these  
20 people are entitled, or it may be one claimant, it may be ten  
21 claimants, you may not grant that request at all, ever. But  
22 why close that door today? Because there may be compelling  
23 circumstances where you believe the arbitration is -- is  
24 appropriate under the circumstance of that claimant.

25 Now --

1           THE COURT: Under PROMESA, how would I have the power  
2 to make a debtor pay a penny more than the debtor declares  
3 itself willing to pay toward arbitration, or force the debtor  
4 to arbitrate?

5           MR. DESPINS: That's called the power of the pen,  
6 meaning that you have the ability to say you want this type of  
7 procedure, I've considered all this, and I will condition my  
8 approval on you agreeing to those provisions. And again, I  
9 want to be very clear, you would not be declaring today that  
10 everyone gets in, but you reserve the discretion to order  
11 that.

12           And again, we believe that that may be very useful.  
13 And it's hard to discuss this in the abstract, because you  
14 don't know what compelling case could be -- and I'm sure that,  
15 you know, you'll exercise discretion and that not everyone  
16 will go through that.

17           And you may say, I'm not shifting the cost at all.  
18 And by the way, today you could decide, I hear your two  
19 proposals; I'm rejecting the cost shifting one, but I will  
20 consider future requests for arbitration. They're not tied  
21 together necessarily. So if you think that there's a real  
22 problem with the shifting of the cost issue, I think you  
23 still should say, I want to reserve discretion to allow some  
24 people to go to arbitration, even though the debtor doesn't  
25 agree.

1                   And it's not a due process issue in the sense that  
2   the debtor is seeking modification of the normal rules to  
3   allow this process to go forward. We believe they're  
4   beneficial because we don't want Your Honor to be dealing with  
5   claims like this on a daily basis. We get that. But there's  
6   nothing wrong with saying, okay, I want to reserve discretion  
7   for that.

8                   That's really our request, Your Honor. Thank you  
9   very much.

10                  THE COURT: Thank you.

11                  Mr. Mudd.

12                  MR. MUDD: Thank you, Your Honor. John Mudd for  
13   Salud Integral en la Montana. I was not hiding in the back.  
14   It's just that my father once told me, stay near a door just  
15   in case you have to run, so --

16                  THE COURT: I will always try not to give you  
17   occasion to feel you need to flee.

18                  MR. MUDD: I was thinking, Your Honor, mostly with  
19   the tremors we've been having. Unfortunately, sometimes they  
20   are very scary.

21                  So I wanted Your Honor to deal with this from a  
22   practical point of view. From what the Board tells us, there  
23   is a group of cases, which I don't think they get to a  
24   thousand, which have not been filed. They're not in court,  
25   federal court or the state court. And there's a group, the

1 majority of them, which are in court. Most of them, of  
2 course, in state court, but not all of them are in state  
3 court. Okay.

4 So we have an offer from the Government of Puerto  
5 Rico, the court systems, in which they have mediation. They  
6 call it mediation in Spanish. That's why I'm using the word,  
7 although we're talking about alternate dispute resolution.  
8 And they can deal with those cases, there's an office for  
9 that, which have not been filed.

10 As to the court cases that have been filed, it seems  
11 to me that it makes more sense to have the Court, the judges,  
12 start dealing with it from the minute of the mediation, you  
13 know, the exchange, et cetera. I'll explain why.

14 You have -- you can appoint somebody else, but we're  
15 talking about 10 to 15,000 cases. And who are the "somebody  
16 else's"? Who's going to pay them? That's number one.

17 Number two, they make an evaluation of the case, good  
18 or bad. The parties decide no, we're going to go to court.  
19 We're going to try this case. Then you go to the judge, and  
20 the judge in state court -- and I'm the only one here who's  
21 arguing this who goes to state court -- they take the pretrial  
22 and they write right next to it, settlement conference. All  
23 cases that I remember in my 37 years as a lawyer, state court  
24 wants to settle cases.

25 And then you have the mediator, whoever it was, in

1 good faith made a number. And then a judge has an awkward  
2 moment. He may not agree or disagree with that. That creates  
3 problems. It seems to me more logical, and cheaper, to have  
4 the state court, where there is a case file, dealing with it  
5 from the beginning.

6 Also, Your Honor, the evaluation of a case depends on  
7 liability and damages. How probable is it that you're going  
8 to win the case, basically?

9 And that is something that the Judge -- because, for  
10 example, I have four cases that are stayed. One of them was  
11 dismissed, so it was in the process of appeal. Another one,  
12 summary judgments had been filed. Another one was starting  
13 out. And another one is also on appeal.

14 So there are different instances in which the judge  
15 who has the case knows what's going on, knows if there is  
16 summary judgment, knows if there was a trial starting, because  
17 some of them may have had that. And it makes more sense for  
18 him to start from the beginning instead of having the mediator  
19 and then going to state court.

20 Also, little footnote, there are cases that are in  
21 federal court. It makes no sense to send them to state court.  
22 Federal courts have their flagging -- obligation to, when the  
23 case is filed and jurisdiction is properly invoked, to see the  
24 case. So those cases, if -- the few that exist, I have three  
25 of them, would have to go to the magistrate, which makes more

1 sense. And they would be able to deal with the case from the  
2 beginning again, instead of having to go to the mediator and  
3 then to the trial.

4 And finally, only one other point, Your Honor,  
5 arbitration. As long as it's voluntary arbitration, I have no  
6 problem with that, or our client has no problem with that. So  
7 if the Court has any questions --

8 THE COURT: No. Thank you.

9 MR. MUDD: Okay.

10 THE COURT: Ms. Stafford.

11 MS. STAFFORD: Good morning, Your Honor.

12 I just wanted to quickly respond to a couple of the  
13 points that were made by the UCC and by Mr. Mudd. With  
14 respect to Mr. Despins' point about the litigation claims  
15 potentially being permitted to participate in at least the  
16 first two pieces of ADR, unfortunately, the number of  
17 litigation claims is the vast majority of the ones that we  
18 currently anticipate sending through ADR. It's roughly 10 or  
19 11,000.

20 So I don't know that there's any kind of floodgate  
21 issue. And we do intend to send almost all of those through  
22 ADR, so I don't know that it solves the floodgate issue that  
23 he's mentioning to take the modification that Mr. Despins had  
24 proposed.

25 With respect to the arbitration piece, as I



1 understood what Mr. Despins was asking for, it was exactly  
2 what we had already mentioned was -- would be a violation of  
3 due process, which would be to obligate the debtors to  
4 participate in arbitration, even when they have expressly not  
5 consented to it.

6 And with respect to Mr. Mudd's point regarding the  
7 mediation and the potential use of Commonwealth Court judges,  
8 we do continue to believe that it makes more sense for the  
9 mediators to be separate from the Commonwealth Court judges.  
10 And I think our current procedures already suggest that there  
11 be a separation between those magistrate judges who are used  
12 as mediators and those magistrate judges who may participate  
13 in the resolution of a claim later on.

14 We think that just makes more sense and preserves the  
15 Judge's ability to both mediate and resolve a case in good  
16 order. And so we think it still makes sense that the  
17 Commonwealth court system be reserved for resolving those  
18 types of claims that -- for claimants who elect to participate  
19 in that portion of the system.

20 THE COURT: And so, for clarity, where the current  
21 procedures say that an evaluating mediator can't get a  
22 reference, you mean in the particular case that that  
23 magistrate judge may have evaluated, not that a magistrate  
24 judge who happens to be among the ranks of the evaluating  
25 mediators --

1 MS. STAFFORD: Correct.

2 THE COURT: -- can't be in the Title III adjudicative  
3 pool at all? Because that would make life very complicated.

4 MS. STAFFORD: I don't want to make your life that  
5 much more complicated, Your Honor. Thank you. That is what  
6 we mean. That if you mediate one claim, you should also have  
7 it --

8 THE COURT: Thank you for clarifying that.

9 MS. STAFFORD: Thank you, Your Honor.

10 THE COURT: Okay. I'm sorry. Judge Dein, did you  
11 want to --

12 Okay. Before I formally make my decision, we jointly  
13 encourage you to continue to consider whether you need to put  
14 convenience class claims through this process.

15 MS. STAFFORD: Understood, Your Honor. Thank you.

16 THE COURT: Thank you.

17 All right. So Judge Dein and I have reviewed  
18 carefully the amended ADR Motion, which is docket entry number  
19 9718, and have carefully reviewed it and considered the  
20 responsive submissions of the Unsecured Creditors Committee,  
21 of SIM, and the Board's reply papers. And I think we all  
22 know what the background is, so I won't go over that. I've  
23 also considered carefully the remarks here in court today, and  
24 we know what the outstanding issues are that are in  
25 contention. So I will go straight to addressing those and the

1 revision -- further revision concerns that the Court has.

2           So as -- let's see. Just one moment. There's  
3 agreement as to consultation in the selection of the  
4 arbitration service provider, so I won't address that.

5           I will turn first then to the comments regarding  
6 enhancement of the record basis for the evaluative mediation  
7 aspect of the ADR process. And as I indicated before, the  
8 Court is persuaded that the submission of short mediation  
9 statements, in connection with the evaluative mediation stage,  
10 would likely prove useful, both to the parties and to the  
11 mediators. And so I request that the Oversight Board revise  
12 the procedures to permit, but not require, claimants to submit  
13 mediation statements of no more than seven pages in length,  
14 double-spaced.

15           And the Court will be developing operational  
16 procedures for the evaluative mediation phase that will  
17 include provisions for the transmission of such statements to  
18 the mediators, as well as addressing other operational and  
19 procedural issues. And we will share those appropriately once  
20 we have those developed.

21           SIM'S submission proffers that Mr. Mudd has elicited  
22 the generous offer of the Commonwealth Court's mediation  
23 system and sitting Commonwealth judges to serve as mediators,  
24 and the Court very much appreciates that offer. But at least  
25 for the first stages of implementation of this ADR program,

1 the Court has determined that using members of the federal  
2 judiciary as evaluative mediators will be efficient, and,  
3 frankly, preferable from the administrative point of view.

4 And I also note it has been discussed here that the  
5 litigation aspect of the proposal contemplates consensual  
6 lifting of the automatic stay to permit adjudication of claim  
7 amounts in Commonwealth courts. So the Commonwealth's  
8 judiciary will play an important role in the claims  
9 reconciliation process, whether or not its judges also  
10 ultimately serve in the mediation phase.

11 And I am assuming, and I hope the Board can confirm  
12 this, that once the stay is lifted and litigation is returned  
13 to the Commonwealth court, there is no -- nothing that would  
14 preclude the negotiation of a settlement in the context of  
15 that litigation phase.

16 Is that correct Ms. Stafford?

17 MS. STAFFORD: That's correct, Your Honor.

18 THE COURT: Ms. Stafford has said that's correct. So  
19 to the extent that Mr. Mudd has indicated that a Commonwealth  
20 judge presented with parties seeking to litigate something is  
21 going to focus on seeing whether it can be settled, there is  
22 nothing here that would impede that process, and it would be  
23 very much appreciated.

24 So I will now outline a number of additional  
25 modifications to the ADR procedures that we believe are

1 necessary. I've mentioned a couple of them. I'll go through  
2 them in order with reference to the proposed procedures and  
3 the Notice Form, which have been filed at docket entry number  
4 10295-1.

5 First, in Section One, as we've discussed earlier,  
6 clarify that there will be a schedule filed of the affected  
7 claims. And in a few minutes, I will talk about the data  
8 points that I would like to see in that schedule and in the  
9 subsequent status reports.

10 And in Section 2(b), please make clear that no claim  
11 objection response will be put into ADR before the first  
12 hundred day tranche. Or if you just want to promise me you  
13 won't do it, I'll take that promise. But that will be my  
14 expectation.

15 In Section 2(d), which is the consent to binding  
16 arbitration, I'm assuming, but asking you to clarify, that  
17 consent to binding arbitration, once given, can't be  
18 subsequently withdrawn by either party. So if the debtor  
19 consents, the debtor can't say at the last minute, I'm not  
20 consenting anymore. So that could be made clearer in the  
21 document.

22 In Section 2(f), I'd ask that you make a clear  
23 mechanism for marking the termination of the offer exchange  
24 phase as we discussed earlier.

25 In Section 3(a), which deals with evaluative

1 mediation, please replace the reference to, "United States  
2 Magistrate Judge" with "Federal Judge," because we may be able  
3 to call more broadly on our federal judicial ranks for that  
4 phase than we can for the Title III adjudication phase.

5 In Section 3(c), the deadline for the mediator to  
6 provide an estimate -- I'm sorry. I'm hesitating here because  
7 I think I brought up here a copy that -- anyway, I had some  
8 notes and I think I remember what they were, so I'm going to  
9 incorporate them in my remarks.

10 We're concerned about the 21-day turnaround for the  
11 mediator's estimate. We're obviously going to try to get this  
12 done as quickly as possible, but we'll be using people who  
13 also have other caseloads. And so I think there might have  
14 been a discussion of 14 at some point. We'd like it to be 28,  
15 with a provision for the mediator to be able to extend by up  
16 to 14 days. And we will always try to stay on the short end  
17 of that range, but especially since we don't know what it's  
18 going to look like yet, we would like that additional room.

19 MS. STAFFORD: That makes sense, Your Honor.

20 THE COURT: Thank you. And I did mean to say that we  
21 really do appreciate the consultation with the Administrative  
22 Office, as well as with other interested parties, in  
23 developing these proposals.

24 Then to perhaps save a little time and keep parties  
25 focused, we'd suggest that in 3(d), the time to respond to the

1 mediator's estimate be actually shortened by a week to 21  
2 days.

3 MS. STAFFORD: That sounds perfect to us.

4 THE COURT: And on the mechanism and period for  
5 termination of the evaluative mediation, again to make sure  
6 people can manage their calendars, I'd ask that the 50-day  
7 period be extended to 75 days.

8 MS. STAFFORD: Sure.

9 THE COURT: Then in 5(d), which is the arbitration  
10 provision, it seems to us that it's important that if anyone  
11 is going to have an objection to the qualification or  
12 independence of the proposed mediation service provider, there  
13 be a mechanism to -- I'm sorry -- arbitration service  
14 provider, there be a mechanism to front and deal with that.

15 So what I'd ask is that the section be modified to  
16 provide for the filing of an informative motion identifying  
17 the arbitration providers from which the proposals have been  
18 solicited, or at least the top two, whoever the finalists are,  
19 before deciding on a provider. And then that permits any  
20 party that objects to the independence or qualifications of  
21 the providers to file a written notice of that within 14 days,  
22 with a provision for a reply by the debtors within seven days.  
23 And then the Court will determine whether any further action  
24 on the objection is required.

25 MS. STAFFORD: Understood, Your Honor.

1                   THE COURT: Section 5(e) deals with video  
2                   conferencing in connection with the arbitration. I would just  
3                   ask that you indicate how the costs of any necessary video  
4                   conference services are to be allocated or dealt with, if  
5                   that's not somehow completely bundled up in the arbitrator's  
6                   fee.

7                   MS. STAFFORD: Understood, Your Honor.

8                   THE COURT: And 6(d), which is the modification of  
9                   the stay for Commonwealth Court litigation, I'd just ask you  
10                  to clarify whether the modifications contemplated by this  
11                  section would be self-effectuating or whether they would be  
12                  documented with the entry of an order by this Court.

13                  I, of course, vote for the latter, as in what we do  
14                  with the AAFAF negotiated stay relief that are filed in  
15                  periodic bundles. I think that would make the record clearer  
16                  and make the statutory compliance clearer.

17                  MS. STAFFORD: That makes sense to us, Your Honor.  
18                  We are happy to use a similar mechanism.

19                  THE COURT: Thank you.

20                  And in 6(d) where you say that there's no --  
21                  everybody bears their own cost for Commonwealth litigation  
22                  unless local procedural rules dictate otherwise, I think you  
23                  should also be referring to statutory fee shifting provisions  
24                  there, because there may be some.

25                  MS. STAFFORD: Understood, Your Honor.



1           THE COURT: Section D, this is the information to be  
2 included in the status report. I'm going to read out now the  
3 types of data points that we would want included, but I also  
4 plan after this conference to file a notice that gives an  
5 exemplar of what the headings would be in the table that I'd  
6 really like to see, which may help you.

7           MS. STAFFORD: That would be very helpful, Your  
8 Honor. Thank you.

9           THE COURT: So just so that everybody knows, we'd be  
10 asking for the Proof of Claim number, a code indicating the  
11 claim amount by reference to brackets. So there would be, you  
12 know, unspecified number, then a 1 to 10,000 dollar bracket,  
13 an 11 to 100,000 dollar bracket, and a couple of additional  
14 brackets, so that we can get a sense of what's being resolved  
15 and what's coming through.

16           Then some general characterization of the type of  
17 claim. So, for instance, business contract, personal injury,  
18 if it's one of the claims related to a Commonwealth law, the  
19 specific number of the law.

20           And then finally, if this is feasible for you, we'd  
21 really appreciate it, if the claim is relating to a pending  
22 litigation, an indication of the forum in which the action is  
23 currently pending and the case number, if it's something with  
24 a docket that we could look up publicly.

25           MS. STAFFORD: I believe that will be feasible in the

1 majority of cases, and we can indicate if, for whatever  
2 reason, we're not able to provide that.

3 THE COURT: You can put not available, if it's not  
4 available?

5 MS. STAFFORD: Yes.

6 THE COURT: And we'd also like to set up a system  
7 where at each omnibus hearing going forward from now, the  
8 Oversight Board provides an oral status report that, at a  
9 minimum, addresses the number and types of claims that have  
10 been and are anticipated to be transferred into the ADR  
11 procedures. And again, this will help us in making our  
12 staffing and structural decisions.

13 MS. STAFFORD: Understood, Your Honor.

14 THE COURT: In 7(e), there seems to be a little bit  
15 of ambiguity between 7(d) and 7(e) as to how inclusive the  
16 term "resolved claims" is. It's a little unclear whether that  
17 includes arbitration resolved claims or not. So that's just a  
18 little clean-up thing.

19 MS. STAFFORD: We'll clarify that.

20 THE COURT: Great. And a typo in Section 8(a),  
21 there's a reference to 4(B) that we think should be 4(a). You  
22 can look at that.

23 A little more substantively, in 8(d) where you recite  
24 the rules that will be applicable in litigation before the  
25 Title III Court, please add an indication that Title 28,

1 Section 636, and Federal Rule of Civil Procedure 72 will also  
2 apply in litigation before claims adjudication judges.

3 MS. STAFFORD: Certainly, Your Honor.

4 THE COURT: And then with the ADR notice, there are a  
5 couple of strong suggestions that I want to make to try to  
6 make it a little bit more accessible and contextualized for  
7 the recipient. So -- and we'll also include a blackline of  
8 the notice in the follow-up notice that I'm going to file.  
9 But what I'm suggesting is that on the second page of the  
10 notice, immediately after the blackout line text box, you  
11 insert a heading that says, "Why am I receiving this notice?"

12 Followed by language to the effect of, "You filed the  
13 claims referenced above in the debtors' Title III case. The  
14 debtor believes that the claim is invalid or overstated, in  
15 whole or in part, and is prepared to offer to agree with you  
16 to a lower stated claim amount instead of starting proceedings  
17 asking the Court to reduce or eliminate your claim."

18 And then your existing paragraph saying, "By this ADR  
19 notice, this is how we're doing it" would follow that, but I  
20 think that might be a somewhat more reader-friendly  
21 introduction.

22 MS. STAFFORD: That makes sense to us, Your Honor.

23 THE COURT: And then you -- let's see. When we  
24 characterize what's going to result from this, the notice at  
25 some points uses the term, "liquidation of a claim," and I

1 think we also need to have a distinction between what's going  
2 to result as, you know, the stated amount of a claim is how  
3 I'm thinking of it, as opposed to what a person will actually  
4 get.

5 And so if you could either consistently use "stated  
6 amount" for that, or define "liquidated" as "stated amount,"  
7 that would be helpful.

8 And at the end of the paragraph that says,  
9 "settlement offer," the final sentence says, "The treatment of  
10 your claim will be determined by the Plan of Adjustment." I  
11 think an additional clause should be added that says, "It will  
12 likely -- the payment will likely be a small proportion of the  
13 agreed stated amount of your claim."

14 MS. STAFFORD: We can add that, Your Honor.

15 THE COURT: So that people again know what this  
16 process is really pointing toward.

17 MS. STAFFORD: Understood, Your Honor.

18 MR. DESPINS: Your Honor, I'm not sure on -- the  
19 amount to be the full amount. I don't understand why you said  
20 a small proportion of the claim.

21 THE COURT: Well, that's why I'm asking them to  
22 consider --

23 MR. DESPINS: Okay.

24 THE COURT: -- how they're dealing with convenience  
25 class, whether that's going to be put through this process or

1 not.

2 And so you can think about it, I don't want to  
3 overstate the warning, but if, for the bulk of these claims,  
4 they're going to be negotiating a big stated amount. And it's  
5 going to be run through, at the end of the day, through a  
6 formula that's going to produce what we call teeny tiny  
7 bankruptcy dollars. I --

8 MR. DESPINS: Your Honor --

9 THE COURT: I want people to be forewarned.

10 MS. STAFFORD: Right.

11 MR. DESPINS: Your Honor, that's the problem, is we  
12 don't know if it's going to be tiny bankruptcy dollars or not.  
13 That hasn't been decided yet. The Plan will decide that. It  
14 could be full dollars. That's not what they're proposing, but  
15 we haven't seen the end of that movie yet.

16 So that's why we're concerned about telling people  
17 -- if you're telling you're going to get tiny bankruptcy  
18 dollars when, in fact, we don't know what the answer to that  
19 is today.

20 THE COURT: Well, maybe call it a significant  
21 possibility that it will be a small -- a significant potential  
22 or something --

23 MS. STAFFORD: Right. At a minimum, I think we can  
24 make clear that there may be a distinction between the amount  
25 that's settled and the amount that's ultimately paid. And we

1 can finesse the language around that.

2 THE COURT: Yes. Be as clear, but as appropriate in  
3 that warning, but I think there needs to be something there.

4 MS. STAFFORD: Understood.

5 THE COURT: And that will also help people make their  
6 determinations as to whether to do this through a settlement  
7 process or, you know, fight over the difference between 50,000  
8 and 60,000, or something like that.

9 MS. STAFFORD: Right.

10 THE COURT: Okay. So on the second page of the  
11 Notice, the last sentence of the paragraph that begins with,  
12 binding arbitration or Commonwealth Court litigation should  
13 include, in addition to the reference to the payment amount  
14 for the arbitrator's services, a statement that they'll also  
15 have to pay the fees of their own lawyer, if any, and any  
16 incidental costs that they incur.

17 MS. STAFFORD: Understood.

18 THE COURT: So that they don't think the arbitrator's  
19 fee is the only thing.

20 And then on page 15 -- sorry, the third page of the  
21 notice where it discusses Commonwealth Court litigation and  
22 says, the debtors will consent to liquidate your claim before  
23 the Commonwealth courts, if you've made -- given a definition  
24 of liquidation before, then that works. Otherwise, saying  
25 something like, "having the stated amount of your claim

1 determined by the Commonwealth Court," might make that  
2 paragraph a little bit more accessible in the instances where  
3 the term "liquidation" is used.

4 MS. STAFFORD: That makes sense, Your Honor.

5 THE COURT: Okay. So those are the line edits.

6 Just a couple of additional comments. Judge Dein and  
7 I would encourage you to make the first tranche of transfers  
8 similar claims in some way. If it's, you know, certain types  
9 of litigation, or accounts payable, or something, just that,  
10 again, will help us with foresight and planning and staffing,  
11 because the first tranche is going to be a little bit of a  
12 pilot program for the parties and for the Court.

13 We will also include in the Order a notation that  
14 these ADR procedures are exempted from Local Rule 83(j), which  
15 is the court-based ADR program. And that's just important so  
16 that the powers that be know what's going on here.

17 MS. STAFFORD: Understood.

18 THE COURT: And as I said, I'll post something on the  
19 docket.

20 So with respect to the rest of the requests, I find  
21 either unwarranted or unnecessary the further modifications  
22 requested by SIM and the Committee that I haven't yet  
23 addressed.

24 As to permitting all claimants or certain types of  
25 additional claimants to voluntarily bring themselves into the

1 offer exchange and mediation phases, I find that the benefit  
2 that might accrue from building that into the structure would  
3 be outweighed by burdens that allowing such participation  
4 would impose on the debtors, the Court and the mediators.

5 For example, the debtors would have to formulate,  
6 communicate and potentially negotiate settlement offers for  
7 claims that they might otherwise be seeking to expunge or that  
8 they believe require litigation modalities that are not  
9 contemplated by these procedures.

10 But Mr. Despins, I would invite you, if you know  
11 of -- you're going to have to see, first of all, what they  
12 start putting in, what cases they start putting in. But if it  
13 occurs to you at some point, or you know of certain litigants  
14 who are just dying to get some sort of offer or would like to  
15 engage in this process, please give the case numbers and the  
16 names to Ms. Stafford. And maybe they'll go in, or, as  
17 Ms. Stafford had said, the Board is open to informal  
18 negotiations.

19 So I'm not trying to shut anybody out. I'm just  
20 trying to have a closed capsule procedure of this sort to  
21 begin with.

22 And with respect to the cost-sharing objection and on  
23 the binding arbitration, I'm satisfied that these procedures  
24 offer claimants adequate alternative avenues for liquidating  
25 their claims, so that a provision permitting requests for



1 modification of the arbitration cost-sharing arrangements is  
2 not necessary.

3 And the Court can't require the debtors to submit to  
4 arbitration with respect to particular claims where the  
5 debtors have not consented. The Court legally can't make that  
6 direct request, and the Court determines not to use its  
7 indirect leverage of withholding approval of these procedures  
8 in order to make that a price of getting these procedures  
9 started.

10 And so are there any further comments, Judge Dein?  
11 You have to lean over.

12 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: I'm  
13 sorry. You indicated that there were a handful that you  
14 thought might be ready to go into the process. Could you just  
15 describe what status those are at?

16 MS. STAFFORD: So there are a number that are -- that  
17 were part of the Omnibus Objections that we filed either in  
18 December or January, and the responses that we received  
19 provided us with a case number or other information that  
20 suggested they are ready to -- they are suitable for these  
21 procedures.

22 Others are ones through either accounts payable  
23 claims or litigation claims, with respect to which we've had  
24 some communications with the government officials and have an  
25 understanding of what an initial offer might be. And so we're

1 ready to send those through.

2 I don't know that there's a huge number at this  
3 point, but I know we are actively working to make sure we have  
4 as many as we can, as ready as we can, once we have the  
5 procedures Orders entered.

6 HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: All  
7 right. One of the things that you can think about, it seems  
8 to me, is if there are exemplar packages where you finish the  
9 exchange, so that we can at least think about the  
10 administrative parts of how to docket things and things like  
11 that, it might be worthy of discussion with the Administrative  
12 Office once you have a package together.

13 MS. STAFFORD: We'd be happy to do that. And I think  
14 we -- I'll let Jay Harriman, who is here in the courtroom,  
15 tell me if I'm wrong, but I think we have at least some that  
16 we can send over in short order.

17 THE COURT: Thank you. And so for all of these  
18 reasons, the Amended Motion is granted subject to the  
19 revisions that I have detailed. And I will file tomorrow, or  
20 at the latest by Friday, an exemplar of the template for the  
21 reporting, and also a black-lined version with the suggested  
22 language changes for the notice, unless you feel you've got a  
23 good enough handle on what I'm asking that I don't need to do  
24 that, because I've given you some options on how to deal with  
25 the liquidation nomenclature and that sort of thing.

1 MS. STAFFORD: I think it would be helpful if you  
2 were to provide us with the order just so we make sure there's  
3 no miscommunications. So --

4 THE COURT: We'll do that. And so then once that's  
5 on file, the Oversight Board is directed to file on  
6 presentment a proposed Order attaching a revised version of  
7 the ADR procedures and notice that incorporates the additional  
8 modifications.

9 And so we'll also give you the additional language  
10 about Local Civil Rule 83(j) for inclusion in the adopting  
11 order.

12 So thank you all for your collaboration, your  
13 patience with me and getting us to this phase. So speaking of  
14 phases, it's now five past 12:00. So we will take a lunch  
15 break now and resume at five past 1:00 to address the revenue  
16 bond related issues, starting with the PRIFA Motion to Amend  
17 the Lift Stay and going into the conference on the Interim  
18 Order. And then we'll finish up with the other one or two  
19 contested matters, I'm not sure which.

20 So thank you all. Have a good lunch. See you at  
21 five past 1:00.

22 (At 12:04 PM, recess taken.)

23 (At 1:14 PM, proceedings reconvened.)

24 THE COURT: Buenas tardes. Please be seated. I  
25 apologize for the delay in resumption.

1                   So we are now at Item III -- sorry, III.3 of our  
2 Agenda, which is Ambac's Motion for Leave to Amend the PRIFA  
3 Lift Stay Motion.

4                   Hello, Ms. Miller.

5                   MS. MILLER: Good afternoon, Your Honor. For the  
6 record, Atara Miller for Milbank on behalf of Ambac.

7                   Your Honor, Rule 15, which you indicated will govern  
8 this motion, provides as a general matter that leave to amend  
9 shall be freely granted. The Oversight Board and AAFAF  
10 apparently ignore the standard, citing it nowhere in their  
11 papers, and arguing instead for denial based on the fact that,  
12 and I'm going to quote them, "movants have not demonstrated  
13 why their proposed amendments would change the calculus."  
14 That's not the Rule 15 standard.

15                   The Oversight Board and AAFAF rely on the limited  
16 exceptions to the broad right to amend based on futility and  
17 undue prejudice. So I want to start by talking about the  
18 proposed amendments and then addressing their specific  
19 arguments.

20                   So the proposed amendments do four things. First,  
21 they address the intervening First Circuit precedent. And as  
22 I was reading over and preparing for today, I realize that one  
23 intervening First Circuit precedent which we failed to  
24 mention, maybe shockingly, was the *Ambac* decision from the  
25 First Circuit which --

1 THE COURT: I've looked at that.

2 MS. MILLER: Right. And I'm sure you know that many  
3 of the proposed amendments, in fact, the entire last section  
4 related to 305 comes directly out of the guidance and  
5 instruction that the First Circuit gave in that decision,  
6 which, frankly, I think was quite a different way of looking  
7 at how constitutional issues and claims should be addressed in  
8 the context of these Title III proceedings, as well as the  
9 First Circuit's decision in *Gracia-Gracia*.

10 Second, it joins the Trustee and makes changes  
11 requested by the Trustee that in their view were necessary to  
12 ensure that the broader interests of bondholders were  
13 reflected. And in that regard, it also joins the other  
14 monoline -- interested monolines.

15 And on that, I think it's -- I note it more because  
16 it consolidates arguments that had separately been raised in  
17 joinders, but it also, in our view, is sort of -- and this is  
18 going to be the fourth goal of the amendment, but it's an  
19 attempt and an effort to really streamline the cases.

20 And as the Interim Order assumes and expects, there  
21 will be coordination on the bondholder side. And so part of  
22 our attempt in the intervening time was to make sure that all  
23 of the bondholders and the Trustee were all on board with  
24 making the same arguments in advance and the same ideas.

25 The third set of amendments address and incorporate

1 new factual information that was revealed since the filing of  
2 the motion.

3 And fourth, as I mentioned, it was aligning the  
4 interests, both in terms of collaborating among the PRIFA  
5 bondholders, but also aligning the arguments in the  
6 presentation of the arguments to the other revenue  
7 bond-related stay motions, so that the Court could have sort  
8 of the comprehensive package and could more easily think about  
9 where the issues are squarely overlapping and what the  
10 differences are between the various issuances.

11 The Oversight Board complains that this resulted in a  
12 wholesale redrafting of the motion. We disagree with that.  
13 And with the exception of two new substantive arguments  
14 related to 305 and the trust res, which come directly out of  
15 the intervening First Circuit decisions, as well as the  
16 withdrawal of certain arguments, also as a result of the  
17 *Gracia* decision, everything else is a reorganization or  
18 reordering and amplification of already existing arguments.

19 But even if it were a wholesale rewrite, we believe  
20 that the amendments further this Court's goal that was imposed  
21 on the parties through the mediation process. It allows for a  
22 more complete and streamlined presentation of the revenue bond  
23 issues, and ensures that overlapping issues are presented to  
24 Your Honor in a coordinated fashion.

25 The Oversight Board notably does not object to the

1 Trustee's addition to the motion, but seeks to impose what we  
2 believe are unreasonable conditions to such joinder. Namely,  
3 they say that if you want the Trustee to be part of it, the  
4 Trustee should just file a simple joinder that says, we're in  
5 the party. That's not how it works. And the Trustee views  
6 itself as having its own duties and responsibilities, and the  
7 Trustee has the right to bring its own motion on behalf of  
8 bondholders.

9           And I suspect, given the holdings in this case, that  
10 if the Trustee were forced to do that, the motion that they  
11 filed would look a whole lot like the proposed amended motion  
12 here. So we're trying to cut through some of the  
13 inefficiencies by pulling it all together in a single,  
14 proposed amended motion.

15           So the Oversight Board focuses its argument on the  
16 limited futility exception in Rule 15, but as I said, the  
17 Oversight Board acknowledges that many of the proposed changes  
18 are appropriate and relevant. And that alone is sufficient to  
19 satisfy Rule 15.

20           Turning to futility, the Oversight Board's arguments  
21 on futility are -- and I thought a lot about how to  
22 characterize it, and if I were talking to my nine-year-old, I  
23 would characterize it as "because I say so," but in this  
24 Court, I'll say that it's what I would call the ultimate ipse  
25 dixit. In plain terms, the Oversight Board is asking this

1 Court to deny the Motion to Amend on their say so that the  
2 entire statutory scheme and all of the attendant property  
3 rights and transfers have been preempted.

4 This position, and I'm sure now that I've said it  
5 we'll hear from the other side that that is not core, but this  
6 position is so fundamental to their motion that they say it no  
7 fewer than 18 times in their opposition brief. Notably,  
8 that's an argument that even AAFAF won't join, and yet it  
9 somehow demonstrates how futile any of the proposed amendments  
10 would be.

11 These questions, including whether, in fact, the  
12 relevant statutes have been or even could be preempted in the  
13 manner suggested by the Oversight Board, and whether  
14 bondholders and the Trustee are a mere creditor of a creditor  
15 as against the Commonwealth, strike at the core of the  
16 underlying stay motions. They are the substantive issues that  
17 this Court is being asked to address on these motions. And  
18 frankly, we think that it is procedurally improper to tee them  
19 up and present them to the Court under the guise of a futility  
20 argument on proposed amendments.

21 We think that the briefing should move forward on  
22 those, and the Court should hear them on -- I don't even know  
23 if we're at the -- I think we're at like 30-hour notice to  
24 consider those issues. Not surprisingly, none of the futility  
25 cases that were cited by the Oversight Board come close to



1 suggesting that futility is evaluated based on whether the  
2 opposing party believes that their untested assertions have  
3 been rebutted or not. If that were the case, then the  
4 standard for whether leave to amend would be granted wouldn't  
5 be that it would be freely granted, but instead it would be  
6 whether the proposed amendments result in immediate  
7 capitulation by the opposing party.

8           The cases cited by the Oversight Board highlight how  
9 inappropriate their futility argument is, as framed here. In  
10 each of those cases, futility was being assessed after a  
11 ruling by the Court on the Complaint and was testing whether  
12 the amendments cured the deficiencies identified by the Court.  
13 That makes sense, right?

14           So once the Court defines the bar, a proposed  
15 amendment then gets measured against that bar, and if it  
16 doesn't clear the bar, then you can determine the proposed  
17 amendments are futile. But here the Oversight Board is urging  
18 Your Honor to assess the proposed amendments against the bar  
19 that they've unilaterally said applies, without giving Your  
20 Honor the opportunity to determine whether they're right or  
21 wrong. And they don't think it requires saying it, but I'll  
22 say it anyway. We disagree with where the Oversight Board  
23 purports to set the bar here.

24           The Oversight Board also argues that the motion  
25 should be denied because the proposed amendments go beyond the

1 scope of the February 27 hearing. And this issue, frankly, is  
2 less important for purposes of this motion, but carries over  
3 to the next one. And so I think there is an aspect of it that  
4 is clearly presented here that I think I have time to address,  
5 so I'm going to take two minutes on that.

6 So first, we disagree with the Oversight Board's  
7 characterization of the amendments in this regard, and in  
8 particular with *Gracia*, which clearly held that trust res held  
9 in a commingled account needs to be traced through the lowest  
10 intermediate balance test to make a prima facie showing for  
11 lift stay purposes.

12 So we would say in that case that our view of *Gracia*  
13 is plainly different than the Oversight Board's, but our read  
14 is that that aspect of the case actually spoke to what is the  
15 prima facie showing that you need to make to establish that  
16 you have a property interest in particular property. And that  
17 is within the scope no matter how you define the scope of the  
18 February 27 hearing.

19 But second, it would be inefficient to limit  
20 amendments, as the Oversight Board seems to be proposing, to  
21 only a core set of preliminary issues. Let's call it that.  
22 Whatever you want to call it, but some limited set. All that  
23 means is that the next time, you know, if we get past that, we  
24 are just going to be back before the Court arguing a motion to  
25 amend again.

1           If the Court's considering now whether an amendment  
2 is appropriate, there should be an amendment to the entire  
3 motion rather than having it piecemeal. I mean, ERS comes to  
4 mind in terms of thinking about, you know, how awkward  
5 procedurally things become when you move forward on a motion;  
6 changes want to be made; it goes up to the Circuit; it comes  
7 back down; changes are then made.

8           You know, there are motions whether -- can we allow  
9 it; can we not; how do we define what the record is. We're  
10 here now, and all of the amendments should come in.

11           But most fundamentally, we continue to object to any  
12 proposed bifurcation of the Stay Motion to separate out  
13 standing and secured status from any of the other issues. Our  
14 position is that there's no authority for such bifurcation  
15 under 362(e).

16           And frankly, we read Your Honor's -- and I'm sure  
17 you'll tell us if we're wrong, but we read Your Honor's  
18 December 19th Order as superseding the June 23rd PRIFA Order  
19 in this regard, providing for supplemental briefing on  
20 standing, secured status and any other issue relevant to a  
21 preliminary hearing.

22           And so we read that Order as saying we're not hearing  
23 until the June 23rd scope secured status, but we're going to  
24 put PRIFA in the same preliminary hearing sort of box that  
25 CCDA and HTA are in.

1           THE COURT: I included in that box "secured status  
2 and standing." So I'm not --

3           MS. MILLER: Right. So to me --

4           THE COURT: -- sure what point it is you're making  
5 here about my having backed off the notion that fronting of  
6 those issues is appropriate.

7           MS. MILLER: Well, I don't think that there is a  
8 basis to say if there is a stay motion, that some issues get  
9 teed up on day one and the rest gets teed up on -- at some  
10 later date that we haven't consented to. I think, under the  
11 statutes, there's authority at least to say that a preliminary  
12 hearing can be set, and then you can have a final hearing  
13 within -- you know, as long as the final hearing is within a  
14 reasonable time, absent exigent circumstances being  
15 demonstrated.

16           THE COURT: The statute requires me to find  
17 compelling circumstances to have anything other than a final  
18 hearing the first time, but I don't read it to have such  
19 limited circumstances it is impossible for me to decide that  
20 dealing with certain gating issues before dealing with the  
21 full scope of evidentiary issues, some of which could  
22 conceivably be mooted by the way, the gating issues, are  
23 precluded by 362(e).

24           MS. MILLER: So our position is that it is precluded,  
25 and I understand that at least in the June hearing you held

1 that you were going to proceed only on scope and secured  
2 status. We read the December Order as expanding the scope of  
3 what was to be presented at the February -- now February 27  
4 hearing.

5 And, frankly, I'll put our view also on the record  
6 that we don't think that an intermediate preliminary hearing  
7 at this point is appropriate. We think we should just go to  
8 final hearing. And I don't know what process is being served  
9 or what exigent circumstances warrant not just moving to a  
10 final hearing.

11 So I understand you may view that differently, but  
12 that's certainly --

13 THE COURT: And I hear you.

14 MS. MILLER: So that's our position.

15 And then I just want to take my last minute to  
16 address prejudice. So the Oversight Board also argues for  
17 denial of the motion based on prejudice, essentially arguing  
18 that the amendment would require them to do more work. That's  
19 always true with post briefing amendments and is not itself a  
20 basis for denial.

21 And I would also say that the argument smacks of  
22 disingenuousness. You know, after 22 pages of arguing how  
23 absolutely irrelevant and futile all of the proposed changes  
24 are, it's hard to take seriously the suggestion that they're  
25 going to be so prejudiced by the additional briefing that they

1 don't even think they need because nothing changes anything in  
2 the calculus.

3 I'm not suggesting that they're not entitled to  
4 supplemental briefing, but I would also note that Your Honor's  
5 Order, in terms of timing, which they complain about, set  
6 tomorrow as the deadline for that, but also provided, unless  
7 the Court Ordered otherwise or unless the parties so  
8 stipulated. And they never even so much as asked us to extend  
9 that, which I'm sure, had we gotten the request, we would have  
10 entertained.

11 So just the last point on prejudice, they argue that  
12 these gating issues would delay the resolution -- sorry, that  
13 delay in the resolution of these issues is prejudicial to  
14 formulation of the Commonwealth's Plan. So on that, I would  
15 note first, the Commonwealth has already formulated and filed  
16 a plan, so I'm not sure what that's a reference to.

17 And while we agree that these are gating issues that  
18 have to be decided before any disclosure statement could be  
19 approved, and certainly before Plan confirmation, right now  
20 they're set for hearing on February 27, which is before the  
21 hearing is even going to be set on the mediator's proposed  
22 schedule on a plan and confirmation. So with that, unless  
23 Your Honor has questions --

24 THE COURT: Just one. So you're telling me that you  
25 read my December 27 Interim Revenue Bond Order to set the

1 February 27 hearing as one on the full scope of factual and  
2 legal issues relevant to the Lift Stay Motions, plus the  
3 question of whether focus on those issues should be delayed  
4 and joined up schedule wise with the dispositive motion  
5 practice on the adversaries? I'm still trying to understand  
6 --

7 MS. MILLER: No, I didn't -- in terms of the  
8 scheduling piece of it --

9 THE COURT: Well, you said two things that I didn't  
10 quite follow, just to be honest, and I'm sure it's me and not  
11 you.

12 MS. MILLER: Could be me.

13 THE COURT: But you said that you read the Interim  
14 Revenue Bond Order to supersede and somehow expand the  
15 allowable scope of whatever a first stage PRIFA hearing is  
16 going to be. And then just now, in closing, you said  
17 something to the effect of now February 27th is cued up as the  
18 final hearing on everything in the Lift Stay Motions. And  
19 that was news to me.

20 MS. MILLER: Oh, no. That's not what I intended at  
21 the end. That -- no, I do not see that as -- I don't see  
22 February 27th as a final hearing as currently set, although we  
23 would suggest that either February 27 or some date shortly  
24 thereafter, if the parties need more time, should be set as  
25 the final hearing.

1           But we view that as the preliminary hearing, which we  
2 think potentially would give -- if what the debtors need is  
3 guidance from this Court on -- that they can use in  
4 formulating a plan, because we would agree with them that  
5 their current plan is patently unconfirmable, and so it will  
6 be revised.

7           And so if that's what they need, I suspect they may  
8 get that at the preliminary hearing, which is currently set  
9 for February 27. So in terms of timing --

10           THE COURT: Right.

11           MS. MILLER: -- there's plenty of time to have this,  
12 whether it's in a preliminary and final hearing construct, or,  
13 as we would advocate, just in a final hearing construct, to  
14 have that issue teed up and heard long before we get to any  
15 disclosure statement, the schedule for which isn't even going  
16 to be out until -- or isn't even going to be argued before  
17 Your Honor until March.

18           THE COURT: Yes. Thank you.

19           MS. MILLER: Thank you.

20           THE COURT: Mr. Bienenstock.

21           MR. BIENENSTOCK: Thank you, Your Honor. Martin  
22 Bienenstock of Proskauer Rose, LLP, for the Oversight Board as  
23 Title III representative of the Commonwealth.

24           Your Honor, I'm going to go to the end of Ambac's  
25 Reply Brief to start off with a few points as to why we think



1 the motion should be denied. But I realized, as I said that,  
2 that I should first advise the Court basically where we're  
3 coming from on this.

4 The Court's June 13 Order, as followed up by, I  
5 guess, the December Order, which sets up the February 27  
6 hearing, most specifically identifies standing and secured  
7 status as issues that the Court wants heard on those dates.  
8 To us, that is critical, because depending on how it's  
9 resolved, there's certainly a possibility, if the Court finds  
10 lack of standing or no secured status or other property  
11 interest that is entitled to adequate protection, then all of  
12 the discovery and everything else that would be involved in a  
13 final stay hearing would be unnecessary.

14 And I would think that was probably at least one of  
15 the considerations that caused the Court to identify those  
16 issues at its June 13, 2019, Order and to follow through on  
17 them. And the rationale for doing it then -- is as good then  
18 as it is now and vice versa. And that's our main were  
19 concern, whether or not the Court ends up allowing the  
20 amendment.

21 As far as prejudice --

22 THE COURT: Well, let me ask you this: You asked me  
23 late Friday night for a page extension on each of the Lift  
24 Stay Motions, which I gather includes the PRIFA related one,  
25 of 65 pages to address all of the issues that have been

1 raised. And so if I grant this motion today, are you filing  
2 your opposition tomorrow, and is it going to address these  
3 amendments in the 65 pages that I gave you? What are you  
4 planning to do?

5 MR. BIENENSTOCK: Well, absent the Court telling me  
6 that we have a few more days for the Amended Complaint, yes,  
7 of course we are going to comply with the Court's Order and  
8 file our responses to the HTA Stay Motion, the PRIFA Stay  
9 Motion that's really -- well, they're all against the  
10 Commonwealth, and the Stay Motion that relates to CCDA and the  
11 Tourism Company.

12 It hasn't been easy, and a few extra days would be  
13 appreciated. But we're going to comply. And in terms of the  
14 content of our response to the -- Ambac's PRIFA Stay Motion at  
15 the Commonwealth level, the bulk, the vast bulk of the  
16 response goes to the issues of property interest and standing.  
17 We also cover the issues the Court identified in the December  
18 Order.

19 At the end, we explain why things we've said  
20 previously in the brief establish compelling circumstances, if  
21 necessary, for the Court to have as long as it wants for the  
22 final hearing, but primarily, the briefs cover secured status.  
23 And by any measure, the bulk of the pages is all the reasons  
24 why they don't have a property interest to protect.

25 Their lien -- you know, in the PRIFA situation, their

1 security interest comes from PRIFA taking money and putting it  
2 into a sinking fund for them. And the whole motion is about  
3 how to get the Court to somehow say that the Commonwealth  
4 either doesn't have a property interest in their revenues it  
5 collects and is supposed to appropriate to PRIFA, or if it  
6 does, it's already given it to PRIFA, so it doesn't have it  
7 anymore.

8 I mean, they came up with a lot of theories that we  
9 conceive of as Hail Mary passes, which is understandable  
10 because the money they were counting on isn't down at PRIFA.  
11 But it's all about property interest.

12 THE COURT: You don't seriously expect me to reject  
13 all of their arguments regarding security interests on this  
14 Motion to Amend, given that I said we're under Rule 15 --

15 MR. BIENENSTOCK: No. No. Not on the Motion to  
16 Amend, no.

17 THE COURT: Okay.

18 MR. BIENENSTOCK: No. I was just explaining the  
19 content of our brief that we'd file tomorrow.

20 THE COURT: And while we're on the brief that you're  
21 filing tomorrow, and this gets a little bit into issues for  
22 the next conference, it seemed to me that on the Reply that  
23 was filed most recently, and I can't remember whether it was  
24 this one or the one regarding the conference, that you seem to  
25 have backed off the issue framed in the Revenue Bond Order of

1 seeking that I find there are compelling circumstances to join  
2 up this lift stay litigation with the Rule 12 motion practice  
3 and the adversaries, and instead, subject to bifurcation of  
4 lift stay -- I'm sorry, standing and security interest issues,  
5 are willing to engage in a lift stay oriented litigation  
6 process?

7 MR. BIENENSTOCK: Okay. Here's our thinking on this.  
8 And, Your Honor, I too am confusing which pleading contained  
9 which analysis, but they're all interwoven. As the First  
10 Circuit pointed out in the *Gracia* decision, which we think the  
11 Court already -- it was no profound new development. We think  
12 that the Court already took it into account when it said it  
13 wanted to hear about secured status. But what the First  
14 Circuit said is, at the preliminary hearing, the Court can at  
15 least look at the property interest on a preliminary basis.

16 And then in the *Grella* case that Ambac relies on,  
17 where it says it only has to make a colorable claim to a  
18 property interest, the First Circuit explains what it means by  
19 a colorable claim is that, in the context of a preliminary  
20 injunction hearing, when you find they have a likelihood of  
21 success, so more than 50 percent chance of success.

22 So here is our thinking on what -- the question Your  
23 Honor just asked. At the stay hearing, at the preliminary --  
24 at the first hearing, let me not call it preliminary hearing,  
25 but at the first hearing, Your Honor has a lot of options.

1 Your Honor can say, I have all of the documents and laws  
2 applicable to the alleged property interest or security  
3 interest. I can make a final decision. If the Court does  
4 that, then there's no need in our adversary proceeding to do  
5 it under 12(b) or anything else. The decision is made.  
6 There's no security interest. There's no property interest.

7 But the Court, Your Honor, also has the option at  
8 the first stay hearing to say, I think it's going to -- it's  
9 going to come out this way, but I'm not making a final ruling.  
10 I want to have a subsequent -- a final hearing or a second  
11 hearing. Well, if the Court does that, then our adversary  
12 proceeding serves a purpose, because we can bring on a 12(b)  
13 or summary judgment motion and get a final ruling on the  
14 property interest.

15 Now, as I've signaled, I think, since it's all based  
16 on documents -- just what grants of security interest or  
17 property interest do the documents provide and the statutes  
18 provide? And they're not going to change. They're documents.

19 We think it's likely the Court can reach a final  
20 determination, but you never know. And so the adversary  
21 proceeding is really only there if the Court can't or doesn't  
22 get to a final determination of the property interest issue.  
23 The Court has a lot of options, therefore, for how it wants to  
24 proceed and track the Stay Motion, on the one hand, and the  
25 adversary proceeding on the other hand.

1 THE COURT: Thank you.

2 MR. BIENENSTOCK: And that's a discretion that Your  
3 Honor has that we, you know, can't take away. And as I said,  
4 we think you'd be able to decide it and want to decide it at  
5 the first hearing on the stay, but we may be wrong. And maybe  
6 the Court will see things or things will come up that will  
7 change that. I can't tell.

8 Okay. In terms of getting back to the amendment  
9 motion --

10 THE COURT: Why I should deny this amendment motion,  
11 since we agree that those core substantive issues are for  
12 later litigation on something other than this particular  
13 motion?

14 MR. BIENENSTOCK: Right. Right. So at the end of  
15 Ambac's reply in footnote eight, it says, oh, by the way, even  
16 if we waived the 30-day limit in 362(e) with our first motion,  
17 we're not waiving it in this amended motion.

18 Well, that's prejudice right there. I mean, we  
19 shouldn't have to give up the waiver that we already have.  
20 Frankly, neither the litigants nor the Court should have to  
21 give that away, if that's the price of letting them amend  
22 their motion. They've actually supplied a prejudice that we  
23 hadn't even known about until they filed their Reply.

24 The other prejudice, and it really goes to the  
25 futility as well, is that we don't agree with the way Ambac

1 today or in its Reply described our opposition. We're not --  
2 not saying look at the merits and then figure out futility.  
3 What we're saying is on the gating issues of property  
4 interests, security interests, and standing, none of their  
5 amendments go to that.

6 Adding the Trustee, as we said, that can happen by  
7 joinder. They said, well, the Trustee gets to file their own  
8 brief, but they control the Trustee. So we think that's a  
9 false thing, that that's what requires a rewrite of a 60-page  
10 brief.

11 Then they want to drop one of their arguments.  
12 Obviously, that's fine. They don't need an amendment to do  
13 it.

14 Then they argue that they got in discovery from AAFAF  
15 wiring instructions. And our point is wiring instructions  
16 that one part of the government says, we're putting the money  
17 here and we want to send it over here has nothing to do with  
18 property interest. That's the mechanics of how they move  
19 their money around, doesn't affect whether they were granted a  
20 property interest, either as a security interest or an  
21 ownership interest. So that's our point of futility.

22 Nothing they're amending helps them on the gating  
23 issues Your Honor said would be decided in the June 13 Order.  
24 And at the least, we think the June 13 Order should be carried  
25 out. And if we lose it, then the Court can say, okay, you can

1 amend, for what it's worth, but it's unnecessary to do that  
2 now.

3 THE COURT: Well, as we see often in pleadings in  
4 civil litigation, and we've seen at stages in this case, there  
5 are pleadings seeking to frame positions as to issues that may  
6 or may not be mooted out by the decision of other issues, but  
7 to put the full set of claims or propositions to be asserted  
8 on the table to be dealt with as appropriate under the Rules  
9 of Procedure.

10 And so it seems that having gone through this  
11 exercise in which Ambac has offered something that it says is  
12 comprehensive of its theories, to say, well, no thank you now,  
13 but maybe you can do that again later, strikes me as terribly  
14 inefficient. So I guess I'm asking if you have anything to  
15 say to help me understand that a little bit better, to feel  
16 that I haven't wasted a whole lot of time reading a brief that  
17 you're telling me I should perhaps maybe read again in four  
18 months. Help me with that.

19 MR. BIENENSTOCK: Well, largely it goes back to the  
20 very first thing I said. Our first priority is to ask the  
21 Court to have a hearing on the gating issues, standing, and  
22 security interests and property interests.

23 Standing, I want to just point out is really a  
24 two-part or it has two -- there are two different standings  
25 involved when we say standing. One standing, which was



1 prominent initially, was whether they had standing to make a  
2 motion given the terms of their Trust Agreement that said that  
3 only the Trustee could sue on the bonds. And that would  
4 likely be cured by joining the Trustee.

5 And we -- frankly, that's why we don't object to the  
6 Trustee joining. We want them to have standing because we  
7 want the decision made.

8 But the second part of standing is if they identify a  
9 property interest of PRIFA -- I mean, their contention is  
10 PRIFA has a right to appropriations from the Commonwealth;  
11 that is PRIFA's right, not the bondholders' right. So that's  
12 a second issue as to whether a creditor of a creditor can have  
13 standing.

14 They have to pass both of those tests, but in the  
15 second standing test, the Court would end up determining the  
16 property issue. So that's good, whether the Court does it on  
17 a preliminary basis or a final basis.

18 And I was just saying that we think we've  
19 demonstrated, but they don't have grounds to amend. But if  
20 the Court was concerned that we might be wrong, it can still  
21 go ahead and hear the gating issues, whether the amendments  
22 are made now or later.

23 Now, I also want to mention, Your Honor, that in  
24 their motion, in their amended motion, they refer to the other  
25 rum producers who are getting some of the Rum Tax remittances.

1 And when we file a motion, I'm sure the Court has noticed  
2 this, even when we reply to a motion, we add a box to the  
3 caption showing who the moving party is and who the  
4 respondents are. Ambac doesn't do that.

5 So it's like, well, anyone who shows up who replies  
6 might be a respondent. And that's what most people do, in  
7 fairness, so they're not out of the mainstream. But here,  
8 since they didn't identify, at least some of the other rum  
9 producers are concerned, and now they're wondering are they  
10 targets.

11 And one of them filed a pleading. And I had asked if  
12 they could have a minute or two to argue, and with the Court's  
13 permission, I'd like to let them do that. They have a  
14 response on file for this hearing.

15 THE COURT: Yes. That's Serralles I think it is?

16 MR. BIENENSTOCK: Pardon me?

17 THE COURT: I was trying to remember the name of the  
18 firm, but the answer is yes.

19 MR. BIENENSTOCK: Thank you, Your Honor. It was  
20 joinder by Serralles. That's the client presumably to the  
21 Oversight Board's opposition.

22 THE COURT: Thank you.

23 MR. ZOUAIRABANI: Good afternoon, Your Honor.

24 THE COURT: Good afternoon.

25 MR. ZOUAIRABANI: Nayuan Zouairabani from the firm of

1 McConnell Valdes.

2           Your Honor, in terms of the Amended Motion -- or the  
3 Proposed Amended Motion, and going to the topic of prejudice,  
4 their Amended Motion, Your Honor, unlike their first motion,  
5 on paragraph four specifically mentions that among the relief  
6 the movants wants to seek would be an action against the rum  
7 companies and to halt the Rum Tax remittances.

8           Now, this was not envisioned in the original Lift  
9 Stay Motion. This is new. As we've mentioned in our previous  
10 pleadings, specifically at docket 7912, we explained how the  
11 waterfall of these Rum Tax remittances are shared between the  
12 Commonwealth and other parties. And we specifically highlight  
13 how the appropriations or the part of that money that is being  
14 held for the benefit of the Rum Tax companies, they do not  
15 enter in the Commonwealth coffers. We're talking about a  
16 different pot.

17           So this amended motion, which identifies the rum  
18 companies 14 times, indicates that they're subordinate.  
19 They're basically -- the movants are bringing us into the  
20 fight.

21           And the reason we're standing here today and we join  
22 with the Oversight Board is we have serious concerns as to the  
23 implications of what these amended motions would have on the  
24 rum companies, and the prejudice this would create, as it was  
25 not originally envisioned in the first motion.

1 I would be remiss not to remind that the rum industry  
2 is one of the biggest and largest industries, not just in  
3 Puerto Rico, but in the whole Caribbean. It employs hundreds  
4 of people, and the repercussions of what the decision may be  
5 could have disastrous results along the island.

6 So we just want to bring to the Court's attention  
7 that by adding the rum companies into the mix, that does  
8 create or could create a big prejudice, and that's one of the  
9 serious concerns we have with the Motion to Amend.

10 THE COURT: Thank you.

11 MS. MILLER: I'm going to resist, despite all of the  
12 litigation urges that live deep inside of me, from engaging on  
13 the substance of a lot of Mr. Bienenstock's presentation. Let  
14 me start quickly with the rum producers. They are squarely at  
15 issue and implicated in this litigation.

16 The Commonwealth, in 2015, on the verge of financial  
17 crisis, decided to subvert the existing scheme and to enter  
18 into --

19 THE COURT: I've read your bifurcation of the lock  
20 box argument.

21 MS. MILLER: But the notion that they're new and that  
22 they're implicated by amendment is absolutely false. The  
23 enforcement -- one of the actions that we're seeking to lift  
24 the stay to have continue -- I don't need to lift the stay to  
25 sue the rum producers. I can go ahead and do that if I have

1 standing and if I have a claim.

2 But one of the underlying actions is the one against  
3 the Federal Treasury seeking to impose a trust account on the  
4 mainland to all of the excise taxes, so that they won't be  
5 improperly diverted downstream, and so all the rum stream --  
6 Rum Tax, Excise Tax stream -- sorry. The entire Excise Rum  
7 Tax stream has always been implicated in the underlying  
8 action. And to the extent that the rum producers believe that  
9 they are entitled to portions of that money, that's been at  
10 issue from long before these cases ever started.

11 So there's certainly no prejudice there and nothing  
12 in the Amended Motion, other than making that clear. And  
13 frankly, given the statements in court today, I'm glad that I  
14 did so, that we're all on the same page about it, changes the  
15 status quo on that.

16 Just a couple of points responding more on the  
17 procedural angle, and one relates to the scope and nature.  
18 And we're sort of hybridizing between this motion and the next  
19 motion, and so I was going to reserve some discussion about  
20 what I think, you know -- their comments on scope is kind of  
21 for the second one, so I'm going to --

22 THE COURT: So let me say this. I would like to  
23 finish this argument with a focus on amendment, but there is  
24 very much in play, for the overall strategizing and  
25 structuring of revenue bond litigation, the question of

1 whether and how, if I say yes, gating issues would be  
2 addressed in relation to the full scope of issues, including  
3 any factual issues upon which the tracing and transmittal memo  
4 arguments may -- I've totally lost myself grammatically, but I  
5 think I've made my point from the way you're nodding.

6 MS. MILLER: Yes. I've got it.

7 So that's how I've been thinking about them. So I'm  
8 going to hold my comments on discovery and what I think the  
9 scope is. And so some of Mr. Bienenstock's comments will go  
10 unresponded to on this motion.

11 THE COURT: Yes.

12 MS. MILLER: I'll respond to them on the next motion.

13 One point, though, is an important one I think for us  
14 all to have in mind as we think through these issues. And  
15 Mr. Bienenstock suggested that there may be circumstances  
16 where this Court could finally decide issues on a Lift Stay  
17 such that they wouldn't have to be decided at the end -- such  
18 that they wouldn't have to be decided in the adversaries and  
19 essentially moot at the adversaries.

20 That's not how lift stays work, and that's not the  
21 goal of lift stays. Lift stays aren't -- even a final lift  
22 stay hearing doesn't finally determine the rights of the  
23 parties, much like you could win a preliminary injunction on  
24 failure to show a likelihood of success on the merits and you  
25 would still then have to move. Now, your motion could be very

1 simple at the end of that, but you would still have to move  
2 for summary judgment on the substantive underlying complaint.  
3 That preliminary --

4 THE COURT: I register Mr. Bienenstock's point more  
5 as to an issue preclusion or collateral estoppel argument than  
6 a direct applicability argument, but maybe I'm wrong.

7 MS. MILLER: So that's why I want to be clear. From  
8 an issue preclusion, collateral estoppel standpoint, the  
9 standards are different. So I don't think it can carry over  
10 from a -- it's the same judge, and you're going to make the  
11 same arguments, and she's clearly giving you a really good  
12 sense of how she views the issues and what your likelihood of  
13 success on them is.

14 So maybe when you think about what your next move is  
15 and how strongly you want to be advancing that argument, or  
16 how you want to be assessing your likelihood of success on the  
17 final, you know, actual substantive question, there's no doubt  
18 that that's a relevant piece. But from a technical -- can you  
19 be collaterally estopped, can it be law of the case, it's just  
20 a preliminary determination on the likelihood of success.

21 Our objection to proceeding with the adversary,  
22 frankly, is that that's not the right forum. And Mr. Servais  
23 is going to address this in the next motion. But it's not the  
24 suggestion that lift stays are a more efficient, or fast,  
25 shortcut way to get to a final determination on any of these

1 | issues. That's not the purpose of a lift stay.

2 |           The lift stay is to just say, can I get into another  
3 | court that has proper jurisdiction to make that final  
4 | determination on the substantive issue so that we can get  
5 | final clarity on the issues presented.

6 |           So from a procedural standpoint, I thought that point  
7 | needed clarification. Thank you.

8 |           THE COURT: Yes. Thank you.

9 |           Thank you all for your arguments and your  
10 | submissions.

11 |           Rule 15 is a liberal standard. The rule itself  
12 | instructs that the Court should freely give leave to amend  
13 | where justice so requires. And the First Circuit has  
14 | characterized the standard as liberal, and stated that there  
15 | are only limited reasons for denying a prejudgment motion to  
16 | amend, including undue delay, bad faith, futility, and the  
17 | absence of due diligence on the movant's part.

18 |           I find that the movant has demonstrated that the  
19 | proposed amendments to the PRIFA Lift Stay Motion would  
20 | potentially resolve at least one aspect of the standing  
21 | dispute, would streamline the issues before the Court, and  
22 | would eliminate the possibility of an inefficient scenario  
23 | whereby the Trustee files a separate lift stay motion related  
24 | to PRIFA.

25 |           Thus, the amendments proposed are not futile. None



1 of the other grounds for denying leave to amend has been  
2 established, and the Motion to Amend is, therefore, granted.  
3 And the Court will file a short order stating that. And this  
4 relates to the Motion to Amend at docket entry 10109.

5 Thank you.

6 And now we will turn to the objections and conference  
7 with respect to the Interim Revenue Bonds Order. And I  
8 understand that you have a lineup of speakers. Are we  
9 starting with the Oversight Board?

10 MR. FIRESTEIN: Your Honor, good afternoon. Michael  
11 Firestein of Proskauer on behalf of the Board.

12 THE COURT: Good afternoon.

13 MR. FIRESTEIN: I think it's up to the Court, but  
14 given the sequence of filing, if you'd prefer the Board to  
15 make its observations first, as distinguished from the  
16 objectors, we're sort of getting a little lost in the shuffle  
17 with all the papers that have been filed, but I'm happy to  
18 indulge the Court in whichever order you would prefer.

19 THE COURT: Well, since the Board seems to have  
20 shifted its position on a couple of the issues that are raised  
21 in the objections, specifically the, you know, target date and  
22 context for a final hearing and a new -- what seems to me a  
23 new approach to the 305 argument in relation to the  
24 adversaries, and it seems to me, you know, an argument that 30  
25 -- well, I guess it's the argument that 305 would -- sorry.

1 Let me put it another way.

2           The Board has said that if the Court were to find  
3 that there is a property interest of the bondholders and  
4 monolines as their subrogees in this money, then the Board may  
5 consider consenting to adequate protection. It seems to me  
6 that the Board is trying to drive this toward bifurcation of  
7 standing in terms of creditor of a creditor and security  
8 interest. And then, to the extent those are established, to a  
9 litigation strategy that would, through adequate protection,  
10 keep issues here and try to convince people that they don't  
11 have a 305 problem.

12           And that is a different state of play from what we  
13 were working with in December, so I would like you to be clear  
14 on where the Board is on these issues now so that the  
15 objections can be presented in the context of what seems to me  
16 a shifting landscape.

17           MR. FIRESTEIN: I'd be happy to do so. If I can just  
18 grab my papers then, Your Honor --

19           THE COURT: Yes.

20           MR. FIRESTEIN: -- because not realizing I was going  
21 first, but I'm happy to do so --

22           THE COURT: Thank you. And of course, if I am  
23 reading you wrong, you will let me know.

24           MR. FIRESTEIN: I don't think you are.

25           Once again, good afternoon, Your Honor. Michael

1 Firestein of Proskauer on behalf of the Board.

2           Given the last argument, I am of the feeling that the  
3 coming attractions may have actually been a viewing of the  
4 feature film, but nonetheless, let me see if I can't proceed  
5 to address the issues in some orderly way for the Court's  
6 consideration.

7           Pursuant to paragraph seven of the Court's Order that  
8 was dated December 27, the purpose of this hearing is to  
9 determine whether anything needs to change in the Interim  
10 Order regarding revenue bonds prior to the March 4th hearing  
11 relating to the amended report of the mediators, which we  
12 expect to be filed on or about February 10th, unless some  
13 other intervening act occurs. I don't have one in mind, but  
14 that's the current date set for its filing.

15           I don't want to bury the lead in connection with  
16 this. The answer is largely now, and I use the word largely  
17 on purpose, most assuredly not the suggestions of the  
18 revisions that the monolines propose.

19           That said, as we noted in our papers that we filed on  
20 Monday, which I think might be the papers that the Court was  
21 actually referring to, which was in response to the objections  
22 that were filed by the monolines last week, there are certain  
23 key gating issues that do need to be addressed.

24           And to echo Mr. Bienenstock, and I don't mean to be  
25 redundant, but in the context of this conference, I want to

1 make sure that we get our exact position directly on the  
2 record. The sooner that we can get those determined by the  
3 Court, the better off all parties are going to be in terms of  
4 knowledge and a path forward.

5 As we frequently pointed out, most assuredly lately,  
6 the goal is to quickly and efficiently, to put it in  
7 shorthand, address the issues of standing and secured status  
8 or other property interests, if any, of the monolines as it  
9 relates to certain Commonwealth revenues retained by the  
10 Commonwealth and historically appropriated to PRIFA, HTA and  
11 CCDA.

12 While there may be other matters of import to  
13 address, be it a plan confirmation, or sooner, those gating  
14 impediments -- or those are gating impediments to advancing  
15 consensual restructuring agreements and plan confirmation.  
16 There are two current paths forward to obtain these rulings  
17 under the existing Order.

18 The Lift Stay Motions -- and I'll address  
19 Ms. Miller's comment as to the finality or lack thereof in  
20 connection with any determination relative to lift stay that  
21 the Court might make. To some extent, I actually think that  
22 makes our point with respect to the adversaries, unless and  
23 until there is some exacting bifurcation that occurs, but the  
24 Lift Stay Motions that were filed by the monolines and the  
25 adversaries that were filed by the Board -- or at least three

1 of them which relate to the claims of the Commonwealth on the  
2 monies in question.

3 And within the adversary context, there are actually  
4 two subpaths that could be used to accomplish the goal. One  
5 is the 12(b) and 12(c) motion practice that is already  
6 established in the current Order, or perhaps on an expedited  
7 basis and not currently in the Revenue Bond Order, but  
8 alluded to in the papers that we filed, Rule 56 motions on  
9 discrete claims alleged in those adversaries. Mind you, Your  
10 Honor, not all of the claims. Those are comprehensive  
11 complaints that were filed. But certain ones that can and  
12 will address most easily the gating issues that we're focused  
13 on here.

14 And that's the last I'm going to speak about Rule 56,  
15 because it is not here, but it is something that is in our  
16 minds about a means to get to the place where we need to be.

17 As the Board noted in its filing on Monday, even  
18 though the adversary complaints are the preferred manner to  
19 obtain these merits-based rulings, and, if needed, the  
20 expeditious schedule that I spoke about a moment ago, the lift  
21 stay could serve as an alternative. And the PRIFA model, if I  
22 can use that term, could be the basis for doing so on those  
23 gating issues.

24 As everyone knows, lift stay motions, and I know  
25 Mr. Bienenstock spoke to this issue, and of course this Court

1 is well aware, can be decided on many grounds unrelated to the  
2 gating issues that I've described, and can consume  
3 considerable time and resources. If the Court -- but if the  
4 Court were inclined to bifurcate, much like PRIFA, the HTA and  
5 CCDA Lift Stay Motions, and I use the word bifurcate in the  
6 vernacular or in the common sense of the word as opposed to  
7 its legal terminology -- because the preliminary hearing which  
8 is set for February 27, or whatever date the Court ultimately  
9 picks for that, could serve that very purpose.

10 And so in response directly to your question, Your  
11 Honor, we invite the Court to treat that hearing for exactly  
12 that purpose if the Court can and will do so. The briefing  
13 will be complete. The very legal, gating issues we're  
14 discussing will be before the Court, including the enabling  
15 acts, the resolutions, contracts, and related materials. And  
16 the Court can make a legal decision on those issues in  
17 addition to whatever other issues the Court believes are  
18 necessary to address at that time.

19 And that's the goal. The monoline suggested  
20 revisions to the Revenue Bond Order would not accomplish that.  
21 We explained the reasons for that in the brief that we filed  
22 the other day, and that I know the Court has reviewed  
23 carefully given the Court's comments. But I want to highlight  
24 a couple of important points.

25 The notion of staying the adversaries, as the

1 monolines suggest, is antithetical to the notion of  
2 expeditious resolution. The notion to proceeding to a final  
3 hearing on the Lift Stays without knowing for certain that the  
4 gating issues are to be resolved is, and I don't mean this in  
5 a pejorative sense, but it's deceptively designed to  
6 potentially accomplish the same thing, which is delay.

7           Simply put, if the lift stay path is pursued, there  
8 is no benefit to going through the entirety of the lift stay  
9 process. And the Court commented earlier about all these  
10 other evidentiary issues that might occur, including a  
11 hearing, much less discovery, that would be associated with  
12 that, which I'll comment upon in a couple of moments.

13           If there is no property interest to protect, that's  
14 what we understand the purpose of the February 27 hearing to  
15 be, among other things, and I think the language of the Order  
16 is pretty clear with respect to that -- I think in each  
17 instance, the Court noted that the February 27 hearing would  
18 be limited to the items identified in Section 1(d) of the  
19 Order, which talk about these various components in the  
20 Court's own words, not necessarily the ones that I've  
21 characterized here.

22           In our mind, it's baffling to understand why the  
23 monolines simply don't want those issues to be determined as  
24 soon as we possibly can.

25           THE COURT: Okay. Just to be clear, the December

1 Order uses standing and secured status specifically in  
2 relation to the PRIFA Motion.

3 MR. FIRESTEIN: Correct.

4 THE COURT: And all those other words about that are  
5 in 1(d) as the subject matter for the preliminary hearing were  
6 words that were offered up by the Oversight Board --

7 MR. FIRESTEIN: Correct.

8 THE COURT: -- that I adopted and put into that Order  
9 in the context of the Oversight Board taking the position that  
10 essentially nothing should happen on the Lift Stays until the  
11 dispositive motion practice in the adversaries was completed.  
12 And you don't seem to be saying that anymore.

13 MR. FIRESTEIN: Well, I am, Your Honor, in the  
14 following sense. It has always been the goal of the Oversight  
15 Board to get a determination on the issues that we've  
16 described.

17 THE COURT: But all a 12(c) motion is going to do is  
18 say whether he's stated a claim.

19 MR. FIRESTEIN: Well, perhaps, but in addition to  
20 that, as thinking has evolved, it is entirely possible that on  
21 a small handful of claims, a Rule 56 motion could also be  
22 brought that would provide further guidance, maybe the  
23 ultimate guidance, on whether there is, in fact, a property  
24 interest.

25 THE COURT: That's not in the current Interim



1 Order.

2 MR. FIRESTEIN: That's correct. That's correct.

3 THE COURT: And you're not telling me everybody in  
4 here has agreed to that, so --

5 MR. FIRESTEIN: Well, no, but subject to the stay  
6 being altered relative to that, if that were the path that we  
7 were permitted the opportunity to pursue, we would likely do  
8 that. But you're right, it's not currently in the Order here  
9 today.

10 If there is another motion that's brought -- this is  
11 an issue, Your Honor, as I understand this hearing, what has  
12 to be done to these Orders, if anything, prior to anything  
13 occurring on March the 4th. And that's the limited scope that  
14 we're talking about.

15 What they have come in and suggested is that they  
16 want the adversaries to be stayed. If the Court is prepared  
17 to make some kind of determination relative to the gating  
18 issues on the 27th of February, in conjunction with the  
19 accumulation of briefing material that the Court will have, we  
20 are agnostic to the notion of which process is necessary to  
21 get there. Our goal is to simply achieve the ruling.

22 While we think we're right, and I'm sure the  
23 monolines believe that they're correct with respect to that,  
24 the answer is what's going to matter. It's going to inform  
25 people relative to how they choose to act in further steps

1 relative to the litigation.

2 At long last, Your Honor, isn't this what the purpose  
3 of what the original stay and directive to the parties to go  
4 to mediation was all about? Figure out a way, not the Court's  
5 obligation, but just generically, try to figure out a way  
6 pursuant to which significant issues can be resolved that  
7 would allow these cases to merge out of Title III.

8 We don't -- we don't necessarily have a preference  
9 whether that occurs in the context of gating issues pertaining  
10 to lift stay determination in the preliminary hearing or  
11 otherwise, or in the context of the adversaries, but we want  
12 it to happen in one way or the other.

13 THE COURT: Well, can you -- is there any reason you  
14 can't live with a gating issue oral argument date that I might  
15 call a preliminary hearing on the Lift Stays on the current  
16 schedule, which is February 27, with the supplemental briefing  
17 attendant thereto? And the motions to dismiss the adversaries  
18 still being due I think on February 27, if I don't stay the  
19 adversary aspect of the Order?

20 MR. FIRESTEIN: I'm trying to think of a one-word  
21 answer, but correct.

22 THE COURT: You don't have to write those motions to  
23 dismiss. You get time later to respond.

24 MR. FIRESTEIN: Well, Your Honor, in all fairness,  
25 we've had plenty of things to write over the past several

1 days. And unfortunately, the Court is then burdened with the  
2 obligation to read them.

3 THE COURT: And I've been doing some composing  
4 myself.

5 MR. FIRESTEIN: Right. And worse yet, make  
6 determinations relative to that. But those will all be  
7 informative.

8 But of course if the Court's inclination is to use  
9 the February 27 hearing as a means to an end to resolve those  
10 issues, to the extent the Court is able to, on the briefing  
11 that comes forward -- I mean, look. The Court -- we know what  
12 we are writing in the briefs that are being filed tomorrow,  
13 for the most part. The Court is unaware, and certainly our  
14 adversaries haven't seen it yet, but I think the way the  
15 briefing has been currently staged to the Court and what you  
16 can anticipate coming from the Oversight Board in its timely  
17 filings tomorrow is exactly that, to enable the Court to make  
18 that precise determination.

19 And that's why I started this by saying largely, no,  
20 we don't believe any change is necessary. And really, I think  
21 I could even take away the word largely relative to that. If  
22 the Court is able to conduct that hearing on the 27th, and  
23 with all deliberate speed be able to guide the parties  
24 regarding what the answer is going to be on these complicated  
25 but discrete issues of secured status.

1           And by the way, if you do, if the Court does do that  
2 on the 27th, we certainly don't have to talk about 305,  
3 although I'm prepared to do that, because the Court did  
4 correctly note that that seems to be something that is in the  
5 air relative to concern that a number of parties have had  
6 regarding its implication.

7           But in the context of the very motions or complaint  
8 or whatever one wishes to call it that the monolines have  
9 filed for this preliminary hearing relative to the 27th, 305  
10 doesn't become an issue. But we still need the Court's answer  
11 to the question regarding standing and secured status.

12           THE COURT: Let me jump ahead a little bit to the  
13 discovery issue. It seemed to me, reading at least the  
14 amended PRIFA papers, that there are arguments about the  
15 transmittal memorandum and subaccount facts being ones  
16 relevant to the stay relief went certainly to the  
17 quantification and tracing of a res but also it wasn't clear  
18 to me, but maybe was part of their argument for the existence  
19 of a security interest.

20           So to the extent you are arguing that there should be  
21 no further discovery pending a determination on the gating  
22 issues, and they're saying, we need to pin down the  
23 transmittal memorandum and the existence of designated  
24 subaccounts as a core factual component of our argument that  
25 we have a security interest, would you be willing to stipulate

1 to those facts for purposes of that preliminary hearing, or  
2 make rapid fire, focused discovery on those particular issues?

3 MR. FIRESTEIN: Well, two points: One, we'd be happy  
4 to consider stipulation with respect to things in particular.  
5 I can't really do this standing at the podium.

6 THE COURT: Yes. But I'm floating the idea.

7 MR. FIRESTEIN: And we'd be happy to consider that  
8 issue. But the notion of rapid fire discovery has something  
9 that -- has not been something that the parties have been able  
10 to come to grips with collectively, as the Court is well aware  
11 given the Court's Order last week.

12 So I don't -- you know, I always like to be  
13 cautiously optimistic that old dogs can learn new tricks, but  
14 I also am pragmatic about the parties' ability to actually  
15 come to grips with what would be a narrowly focused discovery.

16 And I don't know whether that discovery is something  
17 that is actually directed to us as the Board. It's probably  
18 more likely directed to AAFAF under the circumstances, so we  
19 would need to consult with AAFAF on that point.

20 THE COURT: AAFAF is generally a fellow traveler on  
21 these positions, except for the preemption argument, yes?

22 MR. FIRESTEIN: Correct. And they have not joined  
23 the preemption argument, my suspicions is, for reasons other  
24 than Ms. Miller has articulated. They have their own reasons  
25 for perhaps doing so, but I'm not here to speak for

1 Mr. Friedman. And what I really want to do is not be in a  
2 position where I'm committing AAFAP to something standing at  
3 the podium without having had an opportunity to discuss it  
4 with them in advance.

5 THE COURT: Just hear what I just said as a warning  
6 that if I'm going to go with this bifurcated process, and  
7 they're going to say they'd be hobbled on their security  
8 interest claim if I bifurcated it that way without giving them  
9 discovery, I'm going to need you to respond to that in some  
10 procedurally meaningful way and factually meaningful way. So  
11 it's something you would need to work on.

12 MR. FIRESTEIN: Your Honor, it's no different than  
13 what would come up in the context, by analogy, of Rule 56(f),  
14 right, where someone says, I need discovery in order to defeat  
15 this claim, and you have to make a showing as to why it is  
16 that that discovery is necessary and meaningful to the issue  
17 that's being addressed.

18 And I'm not saying that Rule 56 applies here, but  
19 what I'm trying to communicate is that I don't understand the  
20 point, and if there is something --

21 THE COURT: What I'm saying is I'm trying to hold the  
22 February 27 argument schedule. There are briefing deadlines,  
23 so somebody has to get practical on both sides around here if  
24 we're going to do at least a gating issues hearing on the 27th  
25 to move forward.

1 MR. FIRESTEIN: I understand. May I? May I have  
2 just one second, Your Honor?

3 THE COURT: Yes. You may or may not be broadcasting  
4 through that microphone.

5 MR. FIRESTEIN: I think what he said would not have  
6 mattered if it had been generally understood.

7 So I think the notion of the stipulation that Your  
8 Honor commented upon is something that I'm loathe to do in  
9 open court without having had the opportunity to think about  
10 it, but I believe that there is traction that could be  
11 achieved on that score in order to be able to accomplish it.

12 And in the absence of a stipulation, I hear the Court  
13 loud and clear relative to the procedural aspect of needing to  
14 get to a place where if the Court's prepared to do it, that  
15 the resolution would be meaningful on the 27th.

16 THE COURT: Thank you.

17 MR. FIRESTEIN: Okay. Well --

18 THE COURT: Mr. Friedman.

19 MR. FRIEDMAN: Your Honor.

20 THE COURT: You need to be near a microphone, and I  
21 think that may be the only one that broadcasts to everyone.

22 MR. FRIEDMAN: Just we can agree, for AAFAF's  
23 perspective, that we will meet and confer as part of this  
24 process, as fellow travelers as it were, with the monolines  
25 with respect to a stipulation, or, if necessary, some form of

1 limited discovery. We'll certainly commit to that.

2 THE COURT: Thank you.

3 MR. FIRESTEIN: And Your Honor, even though the  
4 hearing is currently set for the 27th, if because of the  
5 accumulation of material or whatever needs to happen in the  
6 interim -- we're not particularly interested in prejudicing  
7 one side or the other on that score.

8 I recognize that it's the Court's Orders and the  
9 Court's directives. And there is an Omnibus that is set the  
10 next week or -- you know, to us, it's cast in stone on the  
11 27th because that's how the Court has directed it. But from  
12 the Board's perspective, it would be fine from our point of  
13 view, in fact, it might be preferable to achieve the very  
14 objective that Your Honor's thinking about to move that  
15 hearing, although I don't particularly have a date in mind  
16 under the circumstances.

17 But I merely offer that as something that -- in order  
18 to accomplish the objectives the Court has laid out.

19 THE COURT: Well, I invite you all to meet and  
20 confer. And if there is a joint proposal for revision of the  
21 briefing and/or hearing schedule for these issues that can  
22 work with my calendar, I'm quite happy to consider it.

23 MR. FIRESTEIN: We'll put that on the list of things  
24 we need to do.

25 THE COURT: Thank you.



1                   MR. FIRESTEIN: But given the way that this has  
2 become focused, I had remarks relative to 305 that I was  
3 prepared to address to the Court, but if we're going to  
4 proceed down this hopeful path of trying to have it done in  
5 conjunction with however we wish to call the hearing regarding  
6 the Lift Stay Motions, I don't know that they are particularly  
7 pertinent, but I'm more than happy to simply note that we  
8 meant what we said in the papers, pursuant to which the  
9 monolines requested that the 305 references be discarded from  
10 the Revenue Bond Order.

11                   And Your Honor included that at admittedly our  
12 request, and it was merely a provision of what our position  
13 is, but 305 is what it is. And whether there is a waiver or  
14 impediment that 305 produces is irrespective to a recitation  
15 in a Court Order as to what our position is on that issue.  
16 And if that solves that particular issue, we're happy to have  
17 that modification made to the Revenue Bond Order.

18                   THE COURT: So that's the excision both of the  
19 paragraph that I've been told originated with the mediation  
20 team, and the paragraph that I added that recites the position  
21 that was taken by the Oversight Board in December?

22                   MR. FIRESTEIN: I believe that that's true, Your  
23 Honor.

24                   THE COURT: All right.

25                   MR. FIRESTEIN: And so again, I put to the -- well, I

1 respectfully ask the Court, if you want me to discuss 305 in  
2 the context of the adversaries -- but I'm not sure that's  
3 currently the path we're heading down under the  
4 circumstances.

5 THE COURT: I think in the interest of time and  
6 efficiency, I will not ask you for presentation on 305. I'll  
7 let you rely on your papers here. If in any of the comments  
8 by the bondholders or the monolines that becomes an issue, I'm  
9 reserving your right to come back and talk about that some  
10 more in reply.

11 MR. FIRESTEIN: Thank you.

12 THE COURT: Thank you.

13 MR. FIRESTEIN: Thank you, Your Honor.

14 THE COURT: Thank you very much, Mr. Firestein.

15 All right. So I understand that first up will be  
16 Assured.

17 MR. SERVAIS: Thank you, Your Honor. Casey Servais  
18 from Cadwalader Wickersham & Taft on behalf of Assured.

19 We also had a game plan which has potentially shifted  
20 somewhat in view of your remarks and the remarks from  
21 Mr. Firestein. So I'm not sure exactly what order we'll be  
22 speaking in, but I guess I am, in fact, going first.

23 THE COURT: Good afternoon, Mr. Servais.

24 MR. SERVAIS: Good afternoon.

25 So the main focus of my remarks had been on our

1 objection to the language inserted into the Interim Revenue  
2 Bonds Order characterizing the hearing on the Lift Stay Motion  
3 as a preliminary rather than a final hearing and limiting the  
4 scope of the issues. We still have that objection. We do not  
5 see any need for a preliminary hearing.

6           Generally, a preliminary hearing is only necessary  
7 where there are exigent circumstances that do not permit a  
8 final hearing within the timelines established under Section  
9 362. That doesn't exist here, because those timing  
10 protections are intended to protect us as secured creditors.

11           We are willing to waive those timing requirements in  
12 a limited way, to a limited extent, for the purpose of having  
13 a final rather than a preliminary hearing, but our goal is  
14 really to not have the issues restricted certainly in the way  
15 currently reflected in the Interim Revenue Bonds Order and to  
16 have a hearing that will result in a final Order that could be  
17 appealed immediately if necessary.

18           And so it's not entirely clear to me to what extent  
19 Your Honor's thinking has shifted in terms of the way that  
20 you've characterized the preliminary status of the hearing in  
21 the current Order, but we do not want a preliminary hearing in  
22 the sense of Section 362(e). We think there should just be a  
23 final hearing under 362(d).

24           THE COURT: Well, let me try to put it this way. It  
25 does seem to me to make sense, and I can give you within the

1 month a hearing and my best effort at a determination on these  
2 gating issues. You know, I could probably do it based on the  
3 papers, but I would prefer not to, and I would benefit from an  
4 oral argument. And then depending on the outcome of that,  
5 maybe I do a, you know, 54(d) type certification of it as a  
6 final and appealable order if you all ask me to.

7 To have a final final hearing including addressing  
8 factual issues of tracing and subaccounts and everything else,  
9 it isn't in any world that I see practicable for February 27.  
10 And so we'd be talking a longer schedule.

11 Now, if what you want is a longer schedule where I  
12 say nothing about gating issues and nothing happens until this  
13 bigger hearing that may include detailed presentations and  
14 arguments on issues that I ultimately won't get to, I'm not  
15 excited about that as a good use of my time or anybody else's.  
16 So it seems to me, inconsistent with your desire to have this  
17 moved, and moved as promptly as possible along a line that can  
18 lead to that final hearing, if that's necessary, that  
19 consenting to time for the briefing and the holding of the  
20 February 27 session -- and what I was thinking about in terms  
21 of logistics would be something like a meet and confer within  
22 two weeks after my decision on standing and security  
23 interests, with the filing of a joint proposed litigation and  
24 discovery schedule within a week after that. And a  
25 stipulation as to the stay going forward after that, or

1 positions on the stay going forward after that.

2 And I think for this all to be practicable, I would  
3 need today a consent to the continuation of the stay until  
4 call it -- you know, three weeks after the Joint Status Report  
5 is submitted, just so that there's room for me to decide, room  
6 for you all to meet, room for you all to develop and me to  
7 consider the structure for how we get to the final final  
8 hearing.

9 I'm not in a position to state a specific date for  
10 the final hearing today, and that's the whole point of looking  
11 at gating issues first. But if you're going to tell me, you  
12 know, you're not going to consent to waive 362(e) past, you  
13 know, February 12, I frankly don't know what you want me to  
14 do, because you're telling me that you don't have the record  
15 you need for a final hearing. And we're certainly not going  
16 to have a final hearing tomorrow or tonight or February 12.

17 So February 27th is the earliest date I can give you  
18 where I'm committing to you to try to make the kind of  
19 progress that you want toward your goal of a final hearing if  
20 necessary. So you tell me what you want.

21 MR. SERVAIS: We would prefer to have a single final  
22 hearing and not a bifurcation of issues.

23 And I would actually point out that the Court did set  
24 a schedule for proposing modifications to the Interim Revenue  
25 Bonds Order. The Oversight Board did not comply with that

1 schedule in making this bifurcation request. The first time  
2 they raised this was in the Reply a couple of days ago.

3 And the whole purpose of this hearing was when the  
4 Oversight Board made its initial response to the mediation  
5 team's report, we did not have an opportunity to respond with  
6 briefing to that. At our request, Your Honor did provide us  
7 with an opportunity to respond in briefing, but the Oversight  
8 Board has now simply recreated the same problem because  
9 they've sprung on us a new proposal that we again have not had  
10 an opportunity to respond to.

11 So our request, as reflected in our January 21st  
12 Objection, is that there be, in compliance with Section  
13 362(d), a final hearing on our Lift Stay Motion, where a stay  
14 of relief will be granted or denied. We are willing to waive  
15 Section 362(e) to the extent necessary to make that happen  
16 in as expeditious a manner as possible, but the goal of the  
17 final hearing is ultimately probably more important than any  
18 kind of extreme expedition.

19 And the purpose of that is the Oversight Board has  
20 stated the goal of getting to merits rulings on these  
21 important issues. As Ms. Miller already noted, a ruling on a  
22 lift stay motion will not be a merits determination, so the  
23 question becomes what is the correct vehicle for a merits  
24 determination.

25 In the Title III context, the only vehicle, as the

1 Oversight Board has acknowledged in its papers, would be an  
2 adversary proceeding. However, we've already attempted to  
3 litigate these revenue bond issues in an adversary proceeding,  
4 and the response from the First Circuit was, well, the Title  
5 III Court can't hear your issues because of Section 305. Yes,  
6 that may violate due process, the fact that you're not able to  
7 raise either your constitutional or your statutory issues in  
8 the Title III Court. What you should do is seek stay relief  
9 and then bring an action in another court.

10 That is what we see as the ultimate vehicle for a  
11 merits determination, and that's what we're trying to get to  
12 as quickly as possible.

13 THE COURT: So --

14 MR. SERVAIS: So the end goal is not --

15 THE COURT: May I interrupt you?

16 MR. SERVAIS: I'm sorry, Your Honor. Yes.

17 THE COURT: And I asked Mr. Firestein not to talk  
18 about his 305 position, but as best I can read the new  
19 choreography on 305, and he'll tell me if I'm wrong on this,  
20 but I think the Oversight Board is saying, see our adversary  
21 as an objection to your claim. If we can't succeed in  
22 expunging your claim as unsecured because you have a property  
23 interest, then all the constitutional arguments attached to  
24 disposition or treatment of that property interest, including  
25 a Takings claim or a contracts claim, whatever else, will have

1 to be dealt with in the context of the Plan.

2 And so in that way, it would end up getting litigated  
3 in the Title III.

4 MR. BIENENSTOCK: (Nodding head up and down.)

5 THE COURT: Now, I see Mr. Bienenstock nodding a  
6 little bit. I see Mr. Firestein perhaps looking a little  
7 perhaps "I'm not sure she's got it." Did I get it?

8 MR. FIRESTEIN: I think so.

9 MR. SERVAIS: So we have the statements from them in  
10 their Response on December 6. They stated their position on  
11 305, which you subsequently took note of in the Interim  
12 Revenue Bonds Order, which is --

13 THE COURT: They seemed to say forget about that; now  
14 we have a new way of thinking about it.

15 MR. SERVAIS: Okay. So to be clear, what they said  
16 in that position statement that was concerning was that they  
17 did not consent to challenges to the validity of fiscal plans,  
18 moratorium laws, or any other -- any of the other devices that  
19 have been used to impair the property interest of the revenue  
20 bond holders. But all of those issues of the validity of  
21 those different instruments are integral to the issue of what  
22 property rights we have, because if the only reason they  
23 allege we don't have a property right is because they  
24 destroyed our property interest using these fiscal plans,  
25 moratorium laws, and other devices, then really the central



1 | issue in the litigation is the validity of -- or in our view,  
2 | invalidity, of those devices that they've used to attempt to  
3 | destroy our property interest.

4 |           So those are really going to be the central issues,  
5 | either in the lift stay context, or in the adversary, or  
6 | hopefully, in our view, an enforcement action outside of the  
7 | Title III court. So if their position is that those  
8 | invalidity issues can't be litigated, then that's a major  
9 | problem and that prevents really an effective adjudication  
10 | within the Title III court because of 305.

11 |           THE COURT: Would you indulge me in letting  
12 | Mr. Bienenstock or Mr. Firestein pop up to clarify what  
13 | they're saying, especially as to that aspect of 305?

14 |           MR. SERVAIS: (Nodding head up and down.)

15 |           MR. BIENENSTOCK: Thank you, Your Honor. Martin  
16 | Bienenstock of Proskauer Rose for the Oversight Board.

17 |           Number one, we think that the First Circuit rulings  
18 | on 305 each responded to requests by Ambac or other insurers  
19 | or bondholders for Orders ordering turn overs of property of  
20 | the Commonwealth, or of another instrumentality of the  
21 | Commonwealth, or declaring that they should be turned over.

22 |           We do not think that the First Circuit in any way  
23 | said that Section 305 gets in the way of determining whether  
24 | there's been a taking of property. Those types of issues,  
25 | which were raised by some of the GO bondholders and probably

1 the monolines, were lure -- to the extent they were dismissed,  
2 they were dismissed because they were requests for advisory  
3 opinions.

4 So our position now on 305 is very simple. As Your  
5 Honor just stated a moment ago, in the context of our  
6 adversary proceedings, it's nothing but an objection to their  
7 claim. The reason it was done by complaint instead of by  
8 motion is that their claims include claims to security  
9 interests, priorities, et cetera. And Bankruptcy Rule 7001(2)  
10 says, if you're doing that, you need an adversary proceeding.

11 So we did it by Complaint, but, in essence, their  
12 Proofs of Claim are the complaints. Our complaints are the  
13 reasons why their Proofs of Claim should not be allowed.

14 In terms of what they can do without any relief  
15 from -- without any relief from the Board in terms of  
16 consenting to 305, if they think that as a result of the  
17 Fiscal Plan or anything else, if there has been a taking of  
18 their collateral, or their property interests -- no one has  
19 ever said they can't come to this Court and get a ruling and  
20 have a claim that their property interest has been taken and  
21 the entity owes them something back as a general unsecured  
22 claim, a secured claim or something else.

23 What they cannot do, and it's not a function of 305,  
24 it's a function of 106(e), is challenge our Fiscal Plan or  
25 budget or anything else that the Oversight Board certifies

1 under PROMESA. I realize that they say to the contrary, but  
2 we frankly think that, for a number of reasons, and I won't  
3 even speculate because it will be -- it will just provoke a  
4 lot more argument today that won't help get Your Honor to a  
5 schedule. But we think they're just dead wrong when they  
6 contend that their inability -- they have to be able to  
7 challenge the Fiscal Plan to establish a taking claim or any  
8 other type of claim. All they have to show is they had  
9 collateral; it was taken.

10 What we're here for is to say they never had the  
11 collateral at the Commonwealth level, so it couldn't have been  
12 taken. When that issue gets resolved, it will make a lot of  
13 this other stuff go away.

14 THE COURT: Thank you.

15 MR. BIENENSTOCK: Thanks.

16 And my colleague asked me to say that in the -- I  
17 guess the Order, the timetable was set to be 45 days after the  
18 preliminary hearing, there would be a final in the interim  
19 case management --

20 THE COURT: Well, I said it's extended for 45 days.  
21 I just tried to make that a little bit more concrete in terms  
22 of mechanics to --

23 MR. FIRESTEIN: It's three sentences, Your Honor.  
24 Michael Firestein of Proskauer.

25 362(e) was already deemed to have been -- the time

1 was deemed to have been waived to a point 45 days after the  
2 preliminary hearing that is currently set for February 27th or  
3 whatever date it ends up being. That's on page six of the  
4 Order. So we don't have to debate.

5 I think Your Honor was struggling with when one gets  
6 a final hearing and whether there's a waiver or not a waiver  
7 under the circumstances, and the conclusion has already been  
8 reached in the existing Order. And I think it would be  
9 difficult to seek to modify the Revenue Bond Order to somehow  
10 retract the waiver that has already been determined pursuant  
11 to the Court's Order under the circumstances.

12 THE COURT: Okay. I don't want to, you know, go down  
13 a spiral drain. I will just note that I think it was in a  
14 footnote in their Reply on the Motion to Amend that Ambac at  
15 least said something like, well, deemed waiver doesn't work;  
16 we didn't agree to that; we have a position that the whole  
17 stay expired in November, but we'd be willing to agree to  
18 something else.

19 And, you know, I don't want to take the time to try  
20 to adjudicate whether that particular Order binds them forever  
21 if they're willing to agree to something that will, as a  
22 practical matter, let us get somewhere today. That's why I  
23 raised that.

24 MR. FIRESTEIN: Happy to accomplish it. I'm just  
25 raising it, that that had been the Order.

1                   And I recognize the distinction between PRIFA on the  
2 one hand and perhaps HTA and perhaps CCDA on the other. Of  
3 course the Court has now ruled already on the Motion for Leave  
4 to Amend, and so we find ourselves in this current  
5 circumstance.

6                   THE COURT: Yes. Thank you.

7                   MR. FIRESTEIN: Thank you.

8                   THE COURT: Mr. Servais.

9                   MR. SERVAIS: So with respect to Section 305, and  
10 this is primarily relevant because it explains why the lift  
11 stays and the subsequent enforcement action in a non-Title III  
12 forum is the best route to a merits ruling, the Oversight  
13 Board has mischaracterized the *Ambac* decision. *Ambac* was  
14 seeking to recover special revenues, but in addition, they  
15 specifically sought a declaration as null of the moratorium  
16 laws and orders in the Fiscal Plan. And they sought that  
17 declaration based, for example, on Section 303 of PROMESA,  
18 which expressly, in *Ambac's* view, preempted the moratorium  
19 laws and is based on the Contracts Clause and the Takings  
20 Clause.

21                   And I don't think the Oversight Board has previously  
22 ever taken the position, if they're taking it today, it's news  
23 to me, that that Section 106(e) bars constitutional challenges  
24 to a fiscal plan. So all of those issues that were already  
25 raised in the *Ambac* adversary proceeding as to whether the

1 moratorium laws are null under Section 303, whether the fiscal  
2 plans and moratorium laws are null and void under the U.S.  
3 Constitution, all of those are already raised within the new  
4 adversary complaints, because those complaints specifically --  
5 I mean, the Oversight Board has tried to analogize our Proofs  
6 of Claim to complaints. We don't think that's exactly right  
7 as a procedural matter, but nonetheless, all those issues that  
8 were in the *Ambac* Complaint that the First Circuit said this  
9 Court could not rule on, are raised in our Proofs of Claim and  
10 they're raised in the objections to the Proof of Claim.

11 Even if that were not the case, the current Interim  
12 Revenue Bonds Order schedules the filing of counterclaims  
13 within those adversary proceedings. When we file those  
14 counterclaims, they are going to very closely resemble the  
15 *Ambac* Complaint. We will challenge the validity of the Fiscal  
16 Plan under the Constitution. We will challenge moratorium  
17 laws under Section 303. And basically these adversary  
18 proceedings will just become a replay of the *Ambac* adversary  
19 proceeding.

20 The *Ambac* adversary proceeding did not lead to the  
21 types of merits rulings that the Oversight Board is looking  
22 for because of Section 305, and it also did not provide due  
23 process as the First Circuit seemed to acknowledge when it  
24 advised revenue bondholders that the way to obtain due process  
25 was to bring an action in a forum where Section 305 does not

1 apply.

2           So we do not view the adversary proceedings as a  
3 viable vehicle for achieving what all of us would like, which  
4 would be merits rulings. We think the steps have to be an  
5 initial lift stay -- well, not an initial. A final lift stay  
6 hearing on the issue of whether we have a colorable claim or  
7 another basis for lifting the stay, leading to enforcement  
8 actions in another forum.

9           And that's really our goal, is to have that final  
10 hearing. And so whatever timing or logistics are needed to  
11 get there, that is what we -- that is what we would like.

12           We do not think that the proposals by the Oversight  
13 Board today were timely. We think they needed to propose  
14 amendments to the Interim Revenue Bonds Order by January 21st.  
15 They didn't do that. We shouldn't have to respond to these  
16 new proposals on two days notice with no opportunity to submit  
17 briefing and response.

18           THE COURT: Anything further? Did you want to say  
19 anything further?

20           MR. SERVAIS: No. Thank you. Unless you have  
21 anything else for me?

22           THE COURT: I want to hear everybody else.

23           MR. SERVAIS: Okay. Thank you.

24           THE COURT: Thank you.

25           Okay. Who else wants to be heard?

1                   Hi again, Ms. Miller.

2                   MS. MILLER: Good afternoon again. Atara Miller from  
3 Milbank on behalf of Ambac.

4                   Just quickly, to close the loop on 305, I don't think  
5 this is an issue that needs to be decided today given where it  
6 seems the Court's leading on the adversary, but I do believe  
7 that whether or not you strike the language, leave the  
8 language in in the Interim Order, I think the Board's position  
9 on 305 is critical for purposes of the Lift Stay.

10                  And I'm hopeful that there will be a clear statement  
11 of the Oversight Board's position on 305 with respect to what  
12 it is or is not waiving or consenting to in the papers that it  
13 files tomorrow, because I think one of the things that Your  
14 Honor's going to have to consider, and one of the core  
15 considerations and arguments that we've raised in our stay  
16 motions -- in our Lift Stay Motions, is the fact that you have  
17 to consider that there is no alternative venue. And that's  
18 exactly what the First Circuit said.

19                  So in case there's any doubt that the First Circuit  
20 wasn't merely addressing the turnover, actually, if you read  
21 through the decision, you know, the First Circuit starts by  
22 saying turnover, well, you don't get that. We decided that in  
23 the *Assured* case. And you know, to the extent Ambac suggests  
24 declaratory relief doesn't violate 305, we address that in the  
25 *Aurelias* action.



1           And then they go on and say, and everything else is  
2 still barred by 305. And then they say, to the extent that  
3 Ambac's counsel argued that our interpretation of Section 305  
4 raises due process concerns because Ambac would be left  
5 without a venue in which to bring its constitutional claims,  
6 nothing precludes Ambac from using the mechanisms provided for  
7 through lift stay in the Bankruptcy Code.

8           And then I believe the colloquy at oral argument was,  
9 and then if that's denied, you'll come to us and you'll  
10 complain about it. And we'll fix it for you if we have to.

11           So there's no question that 305 I think is going to  
12 be an important component of this Court's ability to evaluate  
13 the appropriate forum and whether the stay should be lifted.  
14 So I want to get back -- I know we've moved sort of deep down  
15 the complicated 305 rabbit hole, but I want to get back to  
16 just sort of the nuts and bolts of what I think we have before  
17 us between now and the next Omnibus, which is really what was  
18 at issue.

19           And some of your comments sort of -- I'm happy for  
20 myself, are reflected directly in my notes, including the  
21 suggestion that I do believe that we could stipulate or should  
22 be able to stipulate to a lot of the facts. You know, I'm  
23 reminded, as we're going down this path, that it's not  
24 dissimilar from the Commonwealth-COFINA dispute and the COFINA  
25 interpleader action where they were similarly very narrowly

1 construed and limited to, A, in that case, a sole, single  
2 legal issue of who owns the SUT.

3 And there was discovery that was provided for. And I  
4 thankfully was spared this, but Mr. Friedman probably  
5 remembers it well, when the question was, do we stay in Puerto  
6 Rico through the hurricanes to allow depositions to continue  
7 or do we come to agreement on a set of stipulated facts. We  
8 were able to come to agreement on a set of stipulated facts,  
9 and so I'm optimistic that we'll be able to do the same thing  
10 here.

11 I am a little bit concerned, though, that Your  
12 Honor's comments -- and I'm concerned about how they're going  
13 to be reflected back to us in the meet and confer process --  
14 focus singularly on the two facts that have already been  
15 disclosed, and saying, well, they need more information about  
16 those two pinpoint issues. And what to me that highlights is  
17 the relative positions of the parties here and the information  
18 asymmetry.

19 And so we're in a position now where precluding us  
20 from taking basic discovery on the flow of funds, the use of  
21 the funds, account ownership, balance information, which we've  
22 been asking for for a long time, as Your Honor is aware, puts  
23 them in a position where they can selectively reveal  
24 information that they think might help them shield from  
25 discovery any information that we have, force us to guess what

1 information might be there.

2 Listen, kudos to me. I guessed right the last time  
3 and I asked the right question. But I could have asked the  
4 wrong question also, and then we would have never discovered  
5 information that we think is relevant.

6 We're not asking for broad based discovery, but I'm  
7 fairly confident that despite the repeated statements by the  
8 Oversight Board that this is a simple case that can be decided  
9 on the Statute, the resolution, the agreements and other  
10 documents -- I don't know what the other documents is a  
11 reference to -- that you're not getting a 65-page opposition  
12 brief that tells you how to read the statute and the  
13 resolution.

14 And I'm confident, as we predicted back in the  
15 summer, that what we're going to see tomorrow, and as  
16 reflected in their opposition to the Motion to Amend, are  
17 broad arguments that sweep across a number of factual issues  
18 that go directly to the question of secured status and  
19 standing, including, for example, clawback, and, you know,  
20 what they refer to in their amended motion as the retention  
21 right.

22 There are factual questions about whether it was  
23 triggered, whether it was appropriately applied if it was  
24 properly triggered, preemption issues, which, as Mr. Servais  
25 indicated, implicate all sorts of questions about the Fiscal

1 Plan and other claims. This is not, even if you limit it to  
2 standing and secured status, a question where Your Honor's  
3 going to be asked to simply look at the documents, because  
4 frankly, if you look at the documents, they know that we  
5 clearly carry the burden of demonstrating a prima facie case.  
6 Otherwise, they wouldn't be fighting so hard.

7 I'm not suggesting that the Court preclude them from  
8 making those arguments however they want to, but I think we  
9 should see these motions for what they are. And if they're  
10 going to expand the scope to include every potential legal  
11 theory that cuts us down, then we need discovery into those  
12 issues as raised.

13 And frankly, I wish I could come with a concrete  
14 proposal and have you, you know, rubber stamp it and say, I  
15 agree that's a reasonable scope, because it would make our  
16 life so much easier. But I think, honestly, we probably need  
17 to see what they put in their papers tomorrow before we can  
18 come to you with a proposal, or Judge Dein, or maybe just  
19 through meet and confer.

20 I just didn't want it to be -- your comments to be  
21 construed as saying, the only thing we get discovery in is  
22 PRIFA, and the only thing we got discovery on with respect to  
23 PRIFA are the notations and the, you know, particular, you  
24 know, segregation of accounts within the TSA.

25 THE COURT: Understood. And I thank you for that.

1 And it may be that you're not in a position to speak  
2 definitively to this today, but I'm just going to put the  
3 question out. Are the monolines or the bondholders taking the  
4 position that there are factual issues that are material to  
5 the basic question of whether there is a security interest at  
6 all letting -- putting aside quantification and/or whether  
7 there is a way to get -- overcome the creditor of a creditor  
8 lack of standing argument?

9 Because my inclination still is, so as not to lose a  
10 briefing schedule and a date, in an atmosphere in which I  
11 suspect that my calender is more and more going to be filled  
12 with briefing schedules and dates as we go deeper into the  
13 spring, my inclination is still to keep this February 27th  
14 date and briefing schedule on this narrower set of issues;  
15 have you all work together on a broader schedule toward a  
16 final hearing date that will be done, if necessary, with  
17 stipulations and/or discovery provisions going toward that.

18 And, you know, and that would take us -- that sort of  
19 schedule would take us to the March 4th discussion at the next  
20 Omni anyway, and we can see where things stand. But that  
21 would be something happening. So that's what I am inclined to  
22 do. And it doesn't seem completely inconsistent with, you  
23 know, your request that you ultimately get queued up for a  
24 final hearing. And it gives me the opportunity to think about  
25 these other issues earlier, when I have relatively a little

1 more time. Not a lot more, but relatively.

2 MS. MILLER: I'm not -- I guess I'm not opposed to  
3 holding the February 27th date for a hearing. The question,  
4 frankly, is can we get the information that we need.

5 So to answer your initial question quite directly,  
6 yes, I think there are facts that go directly to certain  
7 arguments. I think Your Honor correctly noted that, you know,  
8 as reflected in the Proposed Amended PRIFA Lift Stay Motion,  
9 we think that the notation isn't, and I wrote it down, just a  
10 cash management mechanics statement, but that under the law,  
11 if there's a specific notation, that a special fund can be  
12 created within a Treasury account by notation.

13 And so if that's a special fund as provided by the  
14 statute, then the minute it goes into the TSA with the  
15 notation, it's in the special fund and it's part of my  
16 collateral. That's one of the alternative arguments that we  
17 have that goes directly to whose property is it and who has a  
18 security interest in it.

19 So yes, unfortunately, I think the answer is that  
20 there is, and I think it does go to these threshold issues,  
21 you know, whether you bifurcate or not, preliminary or final.  
22 I think some amount of discovery is necessary on those.

23 And then I think they're going to raise all sorts of  
24 defenses. I mean, I think if you wanted to really narrow it  
25 and do something rational and say, okay, all the bondholders

1 need to do is demonstrate -- make a prima facie showing that  
2 they have a security interest, and therefore, I'm going to let  
3 them affirmatively make that showing and I'm not going to  
4 consider all of the broad swath of defenses, and those will be  
5 litigated somewhere else at some other forum -- which is  
6 essentially what the First Circuit said, move to lift the stay  
7 and then the other Court will determine preemption issues, for  
8 example, that I was pressing this Court and that Court to rule  
9 on.

10 THE COURT: Unless the Board gets religion and  
11 decides to consent on 305.

12 MS. MILLER: Right. Right. Which, I mean, honestly  
13 --

14 THE COURT: Strategically or spiritually or whatever,  
15 but --

16 MS. MILLER: Whatever. You know, I almost laughed  
17 because time flies when you're having fun, but I've been  
18 arguing for resolution of these issues and a determination  
19 since 2015, long before you or the Oversight Board were on the  
20 scene. And in the notion that someone would stand up and say  
21 the bondholders just want delay -- and we're advocating. We  
22 are the ones who have paid out at this point hundreds of  
23 millions of dollars out of our pocket on claims on behalf of  
24 the Commonwealth, who hasn't been making those payments.  
25 Nobody wants a determination on these issues more than our

1 clients.

2           So, you know, I think we're it seems like for the  
3 first time maybe mutually aligned on trying to get to  
4 resolution. Unfortunately, I think there is some amount of  
5 discovery that goes directly to these issues, and I just don't  
6 know how to get around it.

7           THE COURT: All right. Well, just for what it's  
8 worth, and I realize there may be other people on your side of  
9 the table that want to be heard, and I told Mr. Firestein he  
10 could have a reply, but my inclination at this point is to  
11 hold the briefing schedule and argument timing for February  
12 27th on my books as limited -- as argument limited to standing  
13 and security interest; and at the same time, direct you all to  
14 meet and confer in good faith, candor, realism, and every  
15 other constructive factor you can bring to it, on proposing a  
16 schedule that efficiently and appropriately gets us to a final  
17 hearing on the Lift Stay issues, or a different litigation  
18 modality that can promptly deal with these issues if -- and  
19 we'll set a date for a status report and the proposed Order.

20           And you can think about how that would relate to  
21 Judge Houser's upcoming report, and if at any point in the arc  
22 of the development of that you all jointly say to me, we don't  
23 think we can constructively use February 27th and/or we want  
24 to short circuit the supplemental briefing that's currently in  
25 the schedule because we don't think that can be sufficiently



1 comprehensive or whatever, I'll take it off. But I don't want  
2 to take it off now with no other consensus on or vision of a  
3 mechanism.

4 And I need to set a date for -- you know, unless  
5 you're -- okay. I either need to have the bondholders and  
6 monolines say on the record you waive 362(e) pending the  
7 development of this schedule and/or some terminal date that's  
8 realistic, or, you know, give me a terminal date for a waiver  
9 of the extension -- of the 362(e) periods now that can be  
10 revisited. But I need to get something on the record with you  
11 all having an opportunity to have objected to it or consent to  
12 it so that I don't see another footnote like the one that I  
13 saw in the other brief.

14 MS. MILLER: So I would agree with Mr. Firestein's  
15 comment that we have already, I think at the last hearing,  
16 agreed on the record. I think that footnote was actually not  
17 suggesting that the amendment started a new clock, nor was it  
18 addressing the current waiver. I think there was an interim  
19 period where we objected to an extension and the stay was  
20 extended over our objection, including an extension of the  
21 stay.

22 But I think at this point we would consent or hold by  
23 our consent to 45 days from February 27.

24 THE COURT: That's good.

25 MS. MILLER: I don't know if the others --

1                   THE COURT: Is there anybody who would raise  
2 objection to that?

3                   (No response.)

4                   THE COURT: We're firm on the existing 45 days past  
5 February 27?

6                   MS. MILLER: Yes.

7                   THE COURT: Thank you.

8                   MS. MILLER: Right.

9                   THE COURT: Sorry if I panicked unduly about that or  
10 not unduly --

11                   MS. MILLER: No. I mean, I feel like I should put on  
12 the record, as we did in the footnote, without prejudice to  
13 arguing, that the extension over our objection previously was  
14 improper. But that's not for you to decide today. We've got  
15 -- we certainly won't argue that this has any impact on that.  
16 We are consenting to 45 days from February 27th.

17                   THE COURT: Thank you. All right.

18                   MS. MILLER: So I don't know, Your Honor, if you're  
19 finished with your remarks, and I always hesitate to ask a  
20 question after the Court's issued remarks, but the only thing  
21 that's not clear in my mind is whether you're contemplating  
22 any meet and confer and discussion of potential stipulation or  
23 relevant factual inquiries before the February 27 hearing?

24                   THE COURT: I think there needs to be --

25                   MS. MILLER: Okay.

1           THE COURT:  -- because as I said, I'll be open to a  
2 proposal to take that one off track in favor of something  
3 else.

4           So there's opposition papers due tomorrow, and then I  
5 think there are some supplemental briefing dates in that  
6 February 27 schedule.  So we'll want to get the meet and  
7 confer in before that, so meet and confer by February 7th.  
8 That would be a week from Friday.

9           MS. MILLER:  I think that's fine.  We can talk.  I  
10 think we have a meet and confer on the existing 2004 Monday,  
11 so maybe it makes sense to role it into that.  But we'll  
12 confer with AAFAF and the Oversight Board.

13           THE COURT:  Great.  So just as the bidding stands  
14 right now, I am going to revise the Interim Order, and this is  
15 subject to Mr. Firestein being heard, but I think where I am  
16 now is that I'll revise the Interim Order to take out the  
17 references to considering whether there are compelling  
18 circumstances to put the merits off to coincide with the Rule  
19 12 proceedings on the adversaries.

20           I'm going to say that the preliminary hearing for the  
21 27th is limited to standing and security interest issues,  
22 crossing out all other references to 1(d).  Hold on a second.  
23 I'm going to delete all of those two paragraphs about 305.  I  
24 am leaving in the 45 days stuff.

25           It seems to me that right now, since we do -- are

1 going to move forward and meet and confer and specifically  
2 address discovery in connection with the Lift Stays, I don't  
3 have to do anything right now to those paragraphs about  
4 discovery and applications to amend the schedule.

5 Let me just see if there's anything else that I  
6 flagged on here.

7 So I think that that would be it. And I'm leaving  
8 all of the adversary proceedings scheduling stuff in place as  
9 written right now.

10 MS. MILLER: Your Honor, if we're going to proceed, I  
11 think that sounds right based on the conversations subject to  
12 Mr. Firestein's comments. The only thing that I would  
13 request, quite respectfully, is that if we're going to stick  
14 with the preliminary hearing structure, that Your Honor write  
15 in I guess a willingness to issue a certification of any  
16 ruling coming out of the preliminary hearing on standing and  
17 secured status under Rule 54(d).

18 I don't think that hubbub was related to my last  
19 comment.

20 MR. FIRESTEIN: No. No.

21 THE COURT: Okay. So something -- I'm trying to even  
22 think of where -- to see where I would put that. There must  
23 be a paragraph where I talk about the February 27th hearing --  
24 yes. This is paragraph (d), that's on the bottom of page  
25 five. So this isn't -- 1(d) was the paragraph that had the

1 February 27th hearing, so I would edit it to say that there'll  
2 be a preliminary hearing to determine standing and secured  
3 status.

4 And just one second. Okay. I propose to put in a  
5 sentence, the Court will entertain applications to certify for  
6 appeal the Court's decision with respect to those issues.

7 MS. MILLER: Thank you, Your Honor.

8 MR. FIRESTEIN: I have a preview --

9 THE COURT: So Judge Dein has pointed out that it  
10 might be better to have an earlier deadline for the meet and  
11 confer than the 7th, because if you are going to be brewing up  
12 any discovery issues that you need her to hear in relation to  
13 the February 27th proceedings, you're going to have to ask her  
14 for a hearing the week of the 10th. And so Judge Dein needs  
15 to reserve time; she needs to have fair notice of what the  
16 issues are; and you need to prepare for that.

17 MR. FIRESTEIN: Got it. One moment, Your Honor.

18 THE COURT: Excuse me, folks. Before you all finish  
19 your confab and before I call on Mr. Firestein, Judge Houser,  
20 who's been listening, has requested to be heard. And so if  
21 you don't mind, I would like to invite Judge Houser to speak  
22 now and then you may want to confer further after that.

23 MR. FIRESTEIN: Okay. I'll be seated.

24 THE COURT: Yes. Thank you, Mr. Firestein.

25 Welcome, Judge Houser.

1 I think you have to open her line.

2 COURTROOM DEPUTY: It's open.

3 THE COURT: Judge Houser, would you say something?

4 Because we're not hearing you.

5 All right. Hang on there. We're trying to make sure  
6 your line is open.

7 All right. The machine is telling us it's live, but  
8 we're not hearing you, so we're attending to that. Just hold  
9 on. In the worst case, I'll dial you up on my cell phone and  
10 hold that up to the microphone, but we're trying to avoid  
11 having to do that. I don't want to have to cut off everybody  
12 and have everybody dial back in, so thank you all for your  
13 patience. We're working on this.

14 Okay. Judge Houser, I'm going to call the mobile  
15 number that you provided and hold it up against my microphone,  
16 and we'll hope that works.

17 RECORDED MESSAGE: You have reached XXX-XXX-XXXX. I  
18 can't come to the phone right now. If you'll leave your name  
19 and number, I'll return your call.

20 THE COURT: Tell her we got voicemail.

21 Judge Houser, try speaking, please.

22 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE  
23 HOUSER: Hello.

24 THE COURT: Okay. We've got her. Thank you so much.

25 All right. Judge Houser, you'll need to speak up a

1 little bit. You're a little bit faint.

2 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

3 HOUSER: All right. Let me do that. Can you hear me now,  
4 Judge Swain?

5 THE COURT: Yes, I can. And if you could project  
6 even a little more, I think that would be helpful to  
7 everybody.

8 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

9 HOUSER: All right. How's that? Is that better?

10 THE COURT: Perfect.

11 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

12 HOUSER: Okay. First, sorry for any inconvenience. I don't  
13 know why we were having difficulty unmuting the line, but I  
14 guess we got that solved.

15 So I have two observations, and some, Judge Swain, of  
16 what I wanted to make you aware of, has been mooted by the  
17 course and direction that the hearing has taken. But one of  
18 my purposes of wanting to be heard today was to alert you to  
19 the fact that the amended report that the mediation team will  
20 be filing no later than February 10th will be addressing what  
21 the mediation team believes needs to be done with respect to  
22 the Revenue Bond Order.

23 THE COURT: I'm sorry. Judge Houser, would you hold  
24 on just one second? We seem to have a problem with everybody  
25 else on Court Solutions just now. So just hang on.

1 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

2 HOUSER: Oh, dear.

3 THE COURT: Okay. I'm sorry. You just have to sit  
4 tight, because we need to have everybody here.

5 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

6 HOUSER: Okay. No problem.

7 THE COURT: All right. So this is a test. First,  
8 Judge Houser, are you still there?

9 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

10 HOUSER: I am still here.

11 THE COURT: Okay. Great.

12 And now we're going to wait for word from our test  
13 remote listeners as to whether they're hearing this colloquy.

14 COURTROOM DEPUTY: Yes.

15 THE COURT: Okay. Sounds like everybody can hear,  
16 everybody's on board. Thank you all for your patience.

17 Judge Houser.

18 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

19 HOUSER: Thank you very much. And I'll start over just to  
20 facilitate everyone being able to hear.

21 First, thank you very much for allowing me to  
22 participate in this conversation. Secondly, part of the  
23 reason why I wanted to be heard today has really been mooted  
24 by the direction that the Court has indicated to the parties  
25 it intends to go, which of course is quite helpful. But I do



1 have a couple of observations that I wanted to be sure the  
2 Court was aware of. These observations will not come as a  
3 surprise to any of the parties that have been speaking with  
4 respect to this issue.

5 The mediation team intends to file its amended report  
6 to the Court on or before February 10th. And in that amended  
7 report, we will be making very specific recommendations with  
8 respect to what we think needs to happen as it relates to the  
9 Revenue Bond Interim Order.

10 Again, this is no surprise to the parties you've been  
11 speaking with today, Judge, because in fact, although I will  
12 be very careful here, we met with those parties just last week  
13 to begin to have that dialogue.

14 I believe that the Court's tentative rulings at this  
15 point will be helpful to the process, but there is more work  
16 that needs to be done in hopes that what we report on February  
17 10th may have the support of as many people as possible. In  
18 that regard, your tentative rulings or the inclination that  
19 you've identified as to where you're going I think will be  
20 helpful to the mediation team.

21 So I have two observations. First, we would be happy  
22 to facilitate the meet and confer that the Court is going to  
23 require, because, frankly, we will be continuing to have meet  
24 and confers with the parties as part of our discussion of the  
25 February 10th amended report, and what the recommendations of

1 the mediation team will be with respect to the Revenue Bond  
2 Interim Order, and further processes that should be undertaken  
3 by the Court then.

4 So I think it would be helpful if we participated in  
5 that meet and confer, because again, it gets very intertwined  
6 in what the amended report will likely say with respect to the  
7 Revenue Bond Interim Order.

8 Secondly, we are also very happy to participate in  
9 the work that will be required to try to get to either factual  
10 stipulations or limited discovery. And at this point, we  
11 are -- I hesitate to say it, but sadly, it's probably true, we  
12 are about as familiar with these issues as any other of the  
13 parties are. So my hope is that we could be helpful to that  
14 process and perhaps, with some luck, avoid the necessity for  
15 Judge Dein getting involved on an emergency kind of basis. So  
16 we volunteer our services to Judge Swain, you and Judge Dein,  
17 to see if we can't be of assistance there as part of that  
18 process.

19 Point three, I agree that leaving a hearing on  
20 February 27th will be very helpful. And frankly, I agree that  
21 there are gating issues that are extremely important for the  
22 parties to get a sense of this Court's view of those issues  
23 on. That will not only facilitate the litigation process in  
24 these cases but I am actually hopeful that it could be very  
25 meaningful to us having the opportunity to make more progress

1 with these particular claimants and the Oversight Board with  
2 respect to the treatment of claims under a plan.

3 So I am very encouraged by what -- the course these  
4 hearings have taken, and I really think it's important that  
5 the meet and confers occur. And in hopes that they will be  
6 even more productive, the mediation team is happy to  
7 participate in that process to see if we can't help streamline  
8 these issues and bring them back to the Court both on February  
9 27th and, ultimately, in our amended report that will be filed  
10 even before that hearing.

11 So those are the only comments that I had, Judge.  
12 I'm obviously happy to answer any of your questions.

13 THE COURT: Thank you, Judge Houser. I don't have a  
14 question for you now. I guess what I would do is invite the  
15 parties to resume their huddle, and then -- no, Mr. Firestein  
16 wants to speak?

17 MR. FIRESTEIN: (Nodding head up and down.)

18 THE COURT: All right. So, Mr. Firestein.

19 MR. FIRESTEIN: Thank you, Your Honor. And thank  
20 you, Judge Houser. Michael Firestein of Proskauer on behalf  
21 of the Board.

22 So there is one thing that we might want to huddle  
23 about, but before we get to that point, we actually do have  
24 some consensus relative to a couple of scheduling issues that  
25 we think will be instructive both to Magistrate Judge Dein, as

1 well as to Your Honor, and perhaps as well to Judge Houser.  
2 And then I'll cobble on at the end the one sort of huddle  
3 issue that we can sort of lay out for the folks. It's in  
4 response to what Judge Houser just said.

5 There is consensus amongst the parties that are in  
6 the room representing the monolines that we'd like to tinker a  
7 little bit with the briefing deadlines and the hearing dates,  
8 which we think are not going to make any difference to the  
9 Court we hope. All right?

10 Currently, and this will also facilitate the meet and  
11 confer that we need to have, and, with some benefit, maybe  
12 release a little bit of the pressure that Judge Dein might  
13 experience --

14 HONORABLE UNITED STATE MAGISTRATE JUDGE DEIN:  
15 (Shaking head from side to side.)

16 MR. FIRESTEIN: She's shaking her head. But just  
17 hear me out. With respect to the calendar, we'd like to push  
18 the filing date for our oppositions from tomorrow until  
19 Monday. I'm going to give the Court a break, too, on the back  
20 end of this, I assure you.

21 THE COURT: All right.

22 MR. FIRESTEIN: And the reply that would be due to  
23 those oppositions relating to the Lift Stays be pushed a  
24 comparable number of days. I don't have the date in my mind,  
25 what it is, off the top of my head. Hold on. I actually have

1 the Order in front of me.

2 The replies are February 13, so that would be pushed  
3 the comparable number of days.

4 Is the 17th a holiday? Okay. So I'm happy to extend  
5 it to the Tuesday, if it's satisfactory to the Court when you  
6 hear the other shoe.

7 THE COURT: All right. So that would be oppositions  
8 on February 3rd instead of January 31, right?

9 MR. FIRESTEIN: Correct.

10 THE COURT: And then the replies, February 18th,  
11 which is a Tuesday, instead of February 13?

12 MR. FIRESTEIN: Correct. And at the same time, we  
13 would suggest, and this is a collective suggestion, that  
14 instead of the 27th, that we block the second day of the Omni,  
15 on the 5th, for the hearing on the issues that are raised by  
16 those papers.

17 It may or may not mean a short day on the 4th, but  
18 there are a number of First Circuit arguments that are  
19 sandwiched in and around that, so it gets a little tricky.  
20 But another day in Puerto Rico might be helpful.

21 THE COURT: All right. Do you think we would be  
22 able, and this is, frankly, for travel logistics, to cover --  
23 it will be oral arguments still?

24 MR. FIRESTEIN: Yes.

25 THE COURT: So we should be able to cover that all

1 well before noon, so that if people want to get afternoon  
2 planes, they can get afternoon planes?

3 MR. FIRESTEIN: Goodness knows, Your Honor. I would  
4 hope that in three hours we could address oral argument as it  
5 relates to the narrow issues that are here. I know there's a  
6 lot of people that would like to speak, but I suspect much  
7 like the way the First Circuit does it, when you find out that  
8 you have 20 minutes or 15, you say what you need to say within  
9 the parameters that you've been given. So it shall be  
10 written, you know.

11 THE COURT: Yes. I would find it hard to imagine  
12 that there would be a need to go past, I'll be generous, two  
13 hours on this; but if anybody has a different view, stand up  
14 now and waive your hands like a helicopter. Ms. Miller.

15 MR. FIRESTEIN: I still have the filler for the  
16 comment that Judge Houser made. That's all.

17 MS. MILLER: I don't necessarily have an objection.  
18 I guess it raised in my mind the question of procedurally how  
19 you're envisioning the hearing proceeding and whether we're  
20 imagining, you know, we're going to call CCDA; we're going to  
21 argue that; then we're going to close it; call HTA; argue  
22 that. It's just what the presentation is.

23 So I'm just trying to think that on the HTA clawback,  
24 I think we probably -- I believe we had 40 minutes a side.

25 THE COURT: Well, I guess what I typically do is say

1 each interest block has -- and if it's going to be two hours,  
2 I'll say one hour, and leave it to you all to arrange between  
3 yourselves how you would present non-duplicative arguments and  
4 reserving time for reply for the movants.

5 MS. MILLER: So there are different movants on  
6 different motions here.

7 THE COURT: Yes.

8 MS. MILLER: And there are three separate motions.  
9 So I guess you're imagining one big argument addressing all  
10 three of them, and not slicing it and hearing it sort of CCDA,  
11 the CCDA box, HTA in a separate argument --

12 THE COURT: I was thinking not, because there are  
13 some overarching conceptual --

14 MS. MILLER: Right.

15 THE COURT: -- aspects to these issues.

16 And then I understand that the security interest  
17 arguments will be peculiar to the documents governing each  
18 bond issue. And so I'm kind of imagining this on the fly, but  
19 I would imagine that there would be a principal person or  
20 people to speak to major conceptual issues, and that those  
21 people and others would also have a portion of their allotted  
22 argument time that would go to issues that are specific to  
23 their security interest claim on their bond issues; but that  
24 everybody would be speaking sequentially. So that I'd have a  
25 block of presentations by movants, a block of opposition

1 argument that would engage both the major conceptual issues  
2 and the specific distinctions for the different bond issues,  
3 and then the replies split up in whatever way you all feel is  
4 appropriate, conceptual and specific.

5 And as I say, I would like to think we could get that  
6 done in two hours. You know, please get it done in three.  
7 But, you know, I would give an allocation and let you all  
8 split it up in there.

9 MS. MILLER: Okay. I think that makes sense, and I  
10 agree. The timing wasn't an issue. It just raised in my  
11 mind, I have no idea how we're doing it. I wonder if -- and  
12 I'm also thinking on the fly, but since you often issue orders  
13 that are very helpful in terms of directing us how the hearing  
14 is going to proceed, one way of thinking about it is maybe to  
15 have the conceptual issues argued, and then break out the  
16 specific ones where we're going to be looking at language and  
17 tracking and have that -- instead of everything getting mashed  
18 together, have the response broken out and have the argument,  
19 opposition and reply. So a block --

20 THE COURT: How about this. You meet and confer.

21 MS. MILLER: We'll meet and confer.

22 THE COURT: I'll look forward to a suggestion in your  
23 report.

24 MS. MILLER: Okay. I have no objection to the three  
25 hours.



1 MR. FIRESTEIN: And, Your Honor, to take even  
2 pressure off the Court for this, if this is helpful, frankly,  
3 in the absence of having consensus, if the allocation between  
4 the two sides is 50/50, we are all grown-ups and we should be  
5 able to figure out how we're going to divide up our time to  
6 address the issues that we think are important to the Court.

7 We'll do our best to reach consensus, but I don't  
8 think it's necessary for the Court to line the desks up in a  
9 row and to worry about that. But of course the Court will  
10 have the final say relative to that.

11 THE COURT: Thank you. I will look forward in the  
12 first instance to hearing whatever requests are made in terms  
13 of the structure of the argument --

14 MR. FIRESTEIN: We'll do our darndest.

15 THE COURT: -- which will be on the morning of March  
16 5th here in Puerto Rico.

17 MR. FIRESTEIN: Correct.

18 And the follow-up that relates to the issue that was  
19 raised by Judge Houser concerning the mediator's participation  
20 in the meet and confer, the meet and confer is sort of  
21 ubiquitous terms. There are a few things that are going on  
22 here.

23 And we're quite sensitive to the scheduling  
24 requirements that Judge Houser and her team are obliged to  
25 place into the amended report. I think, and this is just

1 speaking for the Board, and a momentary conversation that I  
2 had with representatives of AAFAF, I think on the scheduling  
3 issues that are necessary for the amended report, that that's  
4 certainly workable and we would welcome it.

5 And the reason why I'm hesitating even slightly is  
6 because sometimes it's difficult to get everybody's time  
7 together here, and a lot of us have to fly to a lot of  
8 different places. And I'm thinking in the first instance, as  
9 it relates to the discovery itself, that we ought to at least  
10 be afforded the time to speak with our adversaries, and they  
11 with us, to see if we can't try to work something out relative  
12 to the discrete issues. That's sort of the reason why we have  
13 moved the filing dates out and the hearing date out, so we can  
14 try to do that. And perhaps in the second instance, right, to  
15 try to relieve some pressure that might be on Judge Dein to  
16 have to deal with this in the first instance.

17 We're happy to engage the mediation team for things  
18 that we can't work out.

19 THE COURT: And so, Judge Houser, is it all right  
20 with you if the parties reach out to you at the time they  
21 believe is appropriate, and if they've decided they're good on  
22 their own, they'll reach out to you and tell you that, too?

23 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE  
24 HOUSER: Look, if they -- my experience has been they've got  
25 difficulty coming to agreement with each other.

1 THE COURT: Oh, don't be such a pessimist.

2 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

3 HOUSER: If they can do it on their own, terrific, but if they  
4 can't, then I'm going to push to make them try to find  
5 solutions. So I'm perfectly fine them trying to do this on  
6 their own in the first instance, but if history is a predictor  
7 of the future, they will not make progress without someone  
8 else in the room helping.

9 THE COURT: So I think I'm hearing --

10 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

11 HOUSER: I hope I'm wrong.

12 THE COURT: I think I'm hearing you saying something  
13 like if you have not heard anything from somebody by the end  
14 of next week, you're probably going to start checking in?

15 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

16 HOUSER: If not sooner, yes.

17 THE COURT: Okay.

18 MR. FIRESTEIN: Well, it's easy to do, Your Honor,  
19 because we already have the initial meet and confer set  
20 pursuant to the Court's Order that was issued last week. So  
21 there is a timeline that we're quite cognizant of.

22 And we welcome Judge Houser's check-ins at any time  
23 that she wishes to do so to help us along the path, but I do  
24 believe that --

25 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

1 HOUSER: And, frankly, just let me be clear, my report's due  
2 February 10th. I'm going to be addressing schedules, so we  
3 don't have until the end of next week to see if they can come  
4 to agreement among themselves in my opinion.

5 MR. FIRESTEIN: I made a different observation. I'm  
6 talking about -- I'm separating discovery and schedule.

7 I think in terms of the scheduling of this stuff, I  
8 don't -- this, again, speaking for myself on behalf of my  
9 client, I don't have a problem with trying to understand what  
10 the schedule is that Judge Houser was thinking of and her  
11 facilitating that, because that for sure is going to be  
12 inclusive in her amended report which is due on the 10th. And  
13 we might as well all get on the same page, if we can, well in  
14 advance of that.

15 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE  
16 HOUSER: Exactly.

17 THE COURT: Okay. Just one thing. Thinking about  
18 the next Omni and the 5th, I talked about the morning thinking  
19 it would be great for everybody to feel pretty comfortable  
20 they can leave in the afternoon if that's what they want to  
21 do, but I am reminding myself I think that we certainly will  
22 have the discussion regarding the mediation team's interim  
23 report scheduled for the 4th. And in December that took a  
24 long time.

25 I think we also have scheduled oral arguments on the

1 fuel line lenders and the unions, priority arguments in  
2 connection with PREPA. There are objections to claims, and,  
3 you know, who knows what else is going to be hung on the tree  
4 in advance of the Omni. So I wouldn't buy any  
5 non-refundable -- run out and buy non-refundable tickets for  
6 the three o'clock flight on the afternoon of the 5th.

7 My team and I will do what it takes to hear  
8 everything that needs to be heard on the 5th, but I'm no  
9 longer as excited about the two o'clock plane.

10 MR. FIRESTEIN: At long last, after a few years of  
11 these Omnibus hearings, one will go the second day. So I  
12 don't know that that's --

13 THE COURT: I think we have had another one go the  
14 second day, but it's been rare.

15 MR. FIRESTEIN: That's all I have, Your Honor.  
16 Otherwise, the comments that the Court made of its inclination  
17 about the modifications to the Order are acceptable to the  
18 Board.

19 THE COURT: Thank you.

20 Judge Houser, anything further?

21 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

22 HOUSER: No, ma'am. Thank you.

23 THE COURT: All right. Thank you.

24 And thank you, everyone. And I will do that interim  
25 revision of the Interim Order. We'll get that filed by the

1 end of the week, but you all know what it says. And you've  
2 got your meet and confer obligations. So I'll look forward to  
3 hearing from you out of that.

4 All right. I think we had --

5 MR. FIRESTEIN: Your Honor.

6 THE COURT: Yes.

7 MR. FIRESTEIN: This is not a merits based  
8 observation, but somebody noted to me in the courtroom that  
9 when you initially called Judge Houser, her -- the voicemail  
10 that came on recited her cell phone into the record. And if  
11 there's a way I just think for public -- we've never had a  
12 redaction, but if there's a way to just not necessarily  
13 transcribe her cell phone number into the record, it might be  
14 useful.

15 THE COURT: Yes. I direct the court reporter not to  
16 reflect the cell phone number in the record.

17 And thank you for noticing that. I was focused on  
18 the fact it was voicemail, and I wasn't listening to what it  
19 was saying.

20 MR. FIRESTEIN: I can't take credit for noticing it,  
21 but the person who did will.

22 THE COURT: I'm sure that Judge Houser's grateful for  
23 that, too.

24 HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE  
25 HOUSER: Thank you very much. Although so many of you already

1 have that number.

2 THE COURT: Okay. So I have lost my Agenda script,  
3 but I think that there was one contested Lift Stay on it.

4 All right. So that's item III.6. And Ms. Stafford,  
5 are you taking care of that?

6 MS. STAFFORD: Good afternoon, Your Honor.

7 THE COURT: Good afternoon.

8 MS. STAFFORD: Laura Stafford from Proskauer on  
9 behalf of the Financial Oversight and Management Board of  
10 Puerto Rico.

11 This is the 102nd Omnibus Objection to Claims, which  
12 seeks to disallow in their entirety a number of Proofs of  
13 Claim that failed to provide a basis for asserting liability  
14 against the debtors. A number of responses to this --

15 THE COURT: Just one second.

16 Mr. Firestein and Mr. Bienenstock, I'm not picking up  
17 your words, but I'm getting a lot of rumbling from your table.  
18 Thank you.

19 Ms. Stafford.

20 MS. STAFFORD: So a number of Responses to this  
21 Objection were filed, all but one of which were adjourned to  
22 the March 24th Omnibus Hearing. With respect to the one  
23 remaining response which was filed by Aracelis Nazario Torres,  
24 and it's Proof of Claim number 11823 at ECF number 9963.

25 In her Response, Ms. Nazario Torres provided

1 documentation that indicated ownership of a bond bearing a  
2 CUSIP number that is associated with a pension funding bond,  
3 Series A 2008 bond, which is covered by a Master Proof of  
4 Claim filed by Bank of New York Mellon on behalf of the  
5 holders of Series A 2008 bonds. And so we'd request that the  
6 Court grant the objection and disallow Ms. Nazario Torres'  
7 claim notwithstanding the Response.

8 THE COURT: And is Ms. Nazario Torres here to be  
9 heard?

10 (No response.)

11 THE COURT: All right. Based on the duplication of  
12 the CUSIP number with the Master Proof of Claim, the objection  
13 to the Nazario Torres claim is sustained. And you will submit  
14 an Order reflecting that?

15 MS. STAFFORD: We will do so, Your Honor.

16 And just for clarity of the record, this Omnibus  
17 Objection, like the earlier ones, also had additional  
18 Responses that came in between the last adjournment and this  
19 adjournment that we would like to adjourn. So as we are doing  
20 with the ones from this morning, we will provide updated  
21 schedules and a revised Proposed Order for the Court.

22 THE COURT: And so the 102nd Omnibus Objection is  
23 sustained as to all of the non-responding claimants and  
24 Ms. Nazario Torres, and the Oversight Board, with its Proposed  
25 Order, will provide a schedule specifying the claims that are



1 affected by that Order.

2 MS. STAFFORD: We will do so. Thank you so much,  
3 Your Honor.

4 THE COURT: Thank you, Ms. Stafford.

5 So that brings me to the end of the prepared Agenda,  
6 and I thank you all. The next scheduled hearing date is the  
7 March 4th Omni, to be followed by or to include the revenue  
8 bond lift stay hearing on March 5th.

9 And as always, my deepest thanks go out to the court  
10 staff in Puerto Rico, Boston and New York for all of their  
11 work in enabling us to do all of this work, and their superb  
12 ongoing support of these complex cases. And my thoughts are  
13 with the people of this island as they continue to cope with  
14 life that includes earthquakes.

15 So thank you all. Safe travels, and keep well. We  
16 are adjourned.

17 (At 3:53 PM, proceedings concluded.)

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1 U.S. DISTRICT COURT )  
2 DISTRICT OF PUERTO RICO)

3

4 I certify that this transcript consisting of 194 pages is  
5 a true and accurate transcription to the best of my ability of  
6 the proceedings in this case before the Honorable United  
7 States District Court Judge Laura Taylor Swain, and the  
8 Honorable United States Magistrate Judge Judith Gail Dein on  
9 January 29, 2020.

10

11

12

13 S/ Amy Walker

14 Amy Walker, CSR 3799

15 Official Court Reporter

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